

180 ✓ 70
13

MONTANA LEGISLATIVE HISTORY

Chapter 713 19 89

Bill H 734 S _____ Original bill & history ✓ C

H. Committee on Business & Economic Development S. Committee on Business & Industry

Hearing Date(s) Feb 12 ✓ C

Hearing Date(s) Mar 10 ✓ C

_____ C

Mar 13 ✓ C

_____ C

Mar 15 ✓ C

_____ C

_____ C

Date Out Feb 12 ✓ C

Mar 15 ✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

Note: A Conference Committee was appointed, but its minutes were not recorded.

HOUSE BILL NO. 734

INTRODUCED BY THOMAS, J. BROWN, WILLIAMS, THAYER

IN THE HOUSE

FEBRUARY 15, 1989 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & ECONOMIC DEVELOPMENT.

FEBRUARY 16, 1989 FIRST READING.

FEBRUARY 18, 1989 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 20, 1989 PRINTING REPORT.

FEBRUARY 21, 1989 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 22, 1989 ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 94; NOES, 6.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & INDUSTRY.

FIRST READING.

MARCH 16, 1989 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 17, 1989 SECOND READING, CONCURRED IN.

MARCH 20, 1989 THIRD READING, CONCURRED IN.
AYES, 46; NOES, 2.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 31, 1989 RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

APRIL 4, 1989

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 5, 1989

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 12, 1989

CONFERENCE COMMITTEE REPORTED.

APRIL 13, 1989

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

APRIL 14, 1989

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE SENATE

APRIL 14, 1989

CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE HOUSE

APRIL 21, 1989

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. *734*
 2 INTRODUCED BY *Thomas J. Brown*
 3 *W. Williams*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 INSURANCE AGENT LICENSING LAWS; DIRECTING THE CODE
 6 COMMISSIONER TO CHANGE ANY REFERENCE TO THE TERM "ENROLLMENT
 7 REPRESENTATIVE", "INSURANCE AGENT", OR "AGENT" TO "INSURANCE
 8 PRODUCER", TO CHANGE ANY REFERENCE TO THE TERM "SURPLUS
 9 LINES AGENT" OR "SURPLUS LINES INSURANCE AGENT" TO "SURPLUS
 10 LINES INSURANCE PRODUCER", AND TO CHANGE ANY REFERENCE TO
 11 THE TERM "TITLE AGENT" OR "TITLE INSURANCE AGENT" TO "TITLE
 12 INSURANCE PRODUCER" WHEREVER IT APPEARS IN THE MONTANA CODE
 13 ANNOTATED; PROHIBITING THE GRANT OR EXTENSION OF A
 14 CONTROLLED BUSINESS LICENSE; PROVIDING THAT MISAPPROPRIATION
 15 OF INSURANCE PREMIUMS OR RETURN PREMIUMS CONSTITUTES THEFT;
 16 ALLOWING THE COMMISSIONER TO REVOKE AN INSURANCE PRODUCER
 17 LICENSE FOR UP TO 5 YEARS; ALLOWING FOR THE AUTOMATIC
 18 SUSPENSION, REVOCATION, OR TERMINATION OF A NONRESIDENT
 19 INSURANCE PRODUCER LICENSE UPON SUSPENSION, REVOCATION, OR
 20 TERMINATION IN HIS STATE OF RESIDENCE; AMENDING SECTIONS
 21 33-1-402, 33-1-711, 33-2-303, 33-2-308, 33-2-309, 33-2-316,
 22 33-2-317, 33-2-708, 33-7-101, 33-8-213, 33-14-301, 33-17-101
 23 THROUGH 33-17-103, 33-17-201, 33-17-211 THROUGH 33-17-214,
 24 33-17-216, 33-17-217, 33-17-221, 33-17-301, 33-17-401,
 25 33-17-404 THROUGH 33-17-407, 33-17-411, 33-17-502 THROUGH

1 33-17-507, 33-17-511 THROUGH 33-17-513, 33-17-602 THROUGH
 2 33-17-604, 33-17-611, 33-17-613, 33-17-1001 THROUGH
 3 33-17-1004, 33-17-1101 THROUGH 33-17-1103, 33-17-1111
 4 THROUGH 33-17-1114, 33-18-401, 33-22-1703, 33-25-202,
 5 33-25-214, 33-25-301, 33-25-302, 33-25-401, AND 33-25-403,
 6 MCA; REPEALING SECTIONS 33-17-202, 33-17-204, 33-17-205,
 7 33-17-218, 33-17-231, 33-17-232, 33-17-402, 33-17-403,
 8 33-17-601, AND 33-17-1104, MCA; AND PROVIDING A DELAYED
 9 EFFECTIVE DATE."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. **Section 1.** Name change -- short form
 13 amendment. Wherever it appears in 33-1-317, 33-1-403,
 14 33-1-711, 33-2-104, 33-2-120, 33-2-121, 33-2-302, 33-2-310,
 15 33-2-313, 33-2-315, 33-2-321, 33-2-701, 33-2-707, 33-2-709,
 16 33-2-723, 33-2-829, 33-2-1102, 33-2-1118, 33-2-1120,
 17 33-2-1306, 33-2-1310, 33-2-1322, 33-2-1331, 33-2-1333,
 18 33-2-1345 through 33-2-1347, 33-2-1353, 33-2-1362,
 19 33-2-1381, 33-3-206, 33-3-217, 33-4-103, 33-4-312, 33-4-511,
 20 33-5-104, 33-6-402, 33-6-403, 33-7-111, 33-7-519, 33-7-525,
 21 33-7-526, 33-8-118, 33-8-122, 33-8-204, 33-8-205, 33-8-211,
 22 33-8-221, 33-8-225 through 33-8-228, 33-10-106, 33-10-110,
 23 33-10-113, 33-10-207, 33-10-216, 33-11-104, 33-11-108,
 24 33-11-109, 33-11-123, 33-14-102, 33-14-201, 33-14-301,
 25 33-14-304, 33-14-307, 33-15-302, 33-15-1101, 33-15-1105,

1 33-16-106, 33-16-1011, 33-17-204 through 33-17-206,
 2 33-17-218, 33-17-231, 33-17-232, 33-17-401, 33-17-403,
 3 33-17-601, 33-18-205, 33-18-210 through 33-18-213,
 4 33-18-305, 33-18-501, 33-19-102 through 33-19-104, 33-19-201
 5 through 33-19-205, 33-19-301 through 33-19-306, 33-19-401,
 6 33-19-402, 33-19-404, 33-19-407 through 33-19-409,
 7 33-20-142, 33-20-212, 33-20-502, 33-20-1102, 33-22-122,
 8 33-22-204, 33-22-207, 33-22-208, 33-22-804, 33-22-805,
 9 33-22-813, 33-22-1515, 33-23-214 through 33-23-216,
 10 33-25-105, 33-25-106, 33-25-201, 33-25-202, 33-25-213,
 11 33-25-215, 33-25-216, 33-30-103, 33-30-105, 33-30-202,
 12 33-30-204, 33-30-305, 33-31-111 through 33-31-113, 33-31-102,
 13 33-31-211, 33-31-311, 33-31-401 or in law enacted by the
 14 51st legislature, the code commissioner is directed to
 15 change the term "enrollment representative", "enrollment
 16 representative's", "enrollment representatives", "enrollment
 17 representatives'", "insurance agent", "insurance agent's",
 18 "insurance agents", "insurance agents'", "agent", "agent's",
 19 "agents", or "agents'" to "insurance producer", "insurance
 20 producer's", "insurance producers", or "insurance
 21 producers'".

22 NEW SECTION. Section 2. Name change -- short form
 23 amendment. Wherever it appears in 33-1-711, 33-2-301 through
 24 33-2-303, 33-2-305 through 33-2-313, 33-2-321, 33-2-326,
 25 33-2-502, 33-2-706, 33-2-709, 33-8-225, 33-17-1104,

1 33-18-212 or in law enacted by the 51st legislature, the
 2 code commissioner is directed to change the term "surplus
 3 lines agent", "surplus lines agent's", "surplus lines
 4 agents", "surplus lines agents'", "surplus lines insurance
 5 agent", "surplus lines insurance agent's", "surplus lines
 6 insurance agents", or "surplus lines insurance agents'" to
 7 "surplus lines insurance producer", "surplus lines insurance
 8 producer's", "surplus lines insurance producers", or
 9 "surplus lines insurance producers'".

10 NEW SECTION. Section 3. Name change -- short form
 11 amendment. Wherever it appears in 33-2-851, 33-25-105,
 12 33-25-106, 33-25-201, 33-25-213, 33-25-216, 33-30-103 or in
 13 law enacted by the 51st legislature, the code commissioner
 14 is directed to change the term "title agent", "title
 15 agent's", "title agents", "title agents'", "title insurance
 16 agent", "title insurance agent's", "title insurance agents",
 17 or "title insurance agents'" to "title insurance producer",
 18 "title insurance producer's", "title insurance producers",
 19 or "title insurance producers'".

20 NEW SECTION. Section 4. Controlled business. (1) The
 21 commissioner may not grant or extend a license to a person
 22 if the license is being or will be used to write controlled
 23 business.

24 (2) The commissioner shall consider a license to have
 25 been, or intended to be, used for the purpose of writing

1 controlled business if, during any 12-month period, the
2 aggregate amount of premiums on controlled business would
3 exceed the aggregate amount of premiums on all other
4 insurance business of the applicant or licensee.

5 **Section 5.** Section 33-1-402, MCA, is amended to read:

6 "33-1-402. Examination of agents insurance producers,
7 managers, and promoters. For the purpose of ascertaining
8 compliance with this code, the commissioner may, as often as
9 he deems considers advisable, examine the accounts, records,
10 documents, and transactions pertaining to or affecting its
11 insurance affairs or proposed insurance affairs of:

12 (1) any an insurance agent producer, solicitor,
13 surplus lines agent insurance producer, general agent
14 insurance producer, or adjuster;

15 (2) any a person having a contract under which he
16 enjoys in fact the exclusive or dominant right to manage or
17 control an insurer;

18 (3) any a person holding the shares of voting stock or
19 policyholder proxies of a domestic insurer, for the purpose
20 of controlling the management thereof of the domestic
21 insurer, as voting trustee or otherwise;

22 (4) any a person engaged in or proposing to be engaged
23 in or assisting in the promotion or formation of a domestic
24 insurer or insurance holding corporation or corporation to
25 finance a domestic insurer or the production of its

1 business."

2 **Section 6.** Section 33-1-711, MCA, is amended to read:

3 "33-1-711. Appeals from the commissioner. (1) An
4 appeal from the commissioner ~~shall~~ may be taken only from an
5 order on hearing or with respect to a matter as to which the
6 commissioner has refused a hearing. Any person who was a
7 party to ~~such the~~ hearing or whose pecuniary interests are
8 directly and immediately affected by any ~~such~~ order or
9 refusal and who is aggrieved ~~thereby~~ by an order or refusal
10 may, within 30 days after the order has been mailed or
11 delivered to the persons entitled to receive the same, the
12 commissioner's order denying rehearing or reargument has
13 been so mailed or delivered, or the commissioner's refusal
14 to grant a hearing, appeal from ~~such the~~ order on hearing or
15 ~~such the~~ refusal of a hearing. Any request for a stay of the
16 commissioner's order must be made within 60 days, to run
17 concurrently with the 30 days for appeal. The appeal ~~shall~~
18 must be taken to the district court of Lewis and Clark
19 County by filing written notice of appeal in ~~such the~~ court
20 and by filing a copy of ~~such the~~ notice with the
21 commissioner, except that in appeals from the suspension or
22 revocation of the certificate of authority of a domestic
23 insurer or of the license of an ~~agent, solicitor,~~ insurance
24 producer or surplus lines agent insurance producer, the
25 person taking the appeal may at his option, in lieu of the

1 district court of Lewis and Clark County, take the appeal to
2 the district court of the county of Montana in which the
3 insurer has its principal place of business or the licensee
4 resides.

5 (2) Upon filing of the notice of appeal ~~therein~~, the
6 court ~~shall have~~ has full jurisdiction and shall determine
7 whether ~~such the filing shall operate~~ operates as a stay of
8 the order or action appealed from.

9 (3) Within 20 days after filing of the copy of the
10 notice of appeal in his office, the commissioner shall make
11 and return to the court in which the appeal is pending a
12 copy of his order appealed from and a full and complete
13 transcript, duly certified by the commissioner, of his
14 record of the hearing upon which the order was issued,
15 together with all exhibits and documentary evidence
16 introduced ~~thereat~~ at the hearing. If the appeal is from an
17 action of the commissioner with respect to which a hearing
18 was refused, the commissioner shall, within ~~such the~~ 20-day
19 period, make and return to the court a full and complete
20 transcript, duly certified by him, of all documents on file
21 in his office directly relating to the matter as to which
22 ~~such the~~ appeal is taken.

23 (4) Upon receipt of ~~such the~~ transcripts and evidence,
24 the court shall hear the matter de novo as soon as
25 reasonably possible thereafter. Upon the hearing of the

1 appeal, the court shall consider the evidence contained in
2 the transcript, exhibits, and documents ~~therein~~ filed by the
3 commissioner, together with ~~such~~ additional proper evidence
4 as may be offered by any party to the appeal.

5 (5) After hearing the appeal, the court may affirm,
6 modify, or reverse the order or action of the commissioner,
7 in whole or in part, or remand the action to the
8 commissioner for further proceedings in accordance with the
9 court's direction.

10 (6) Costs ~~shall~~ must be awarded as in civil actions.

11 (7) Appeal may be taken to the supreme court from the
12 judgment of the district court as in other civil cases to
13 which the state is a party. A stay of the effectiveness of
14 any ~~such~~ judgment may be made only by order of the supreme
15 court upon the giving of ~~such~~ security as that court ~~deems~~
16 considers proper.

17 (8) This section ~~shall~~ does not apply to appeals as to
18 matters covered by chapter 16."

19 **Section 7.** Section 33-2-303, MCA, is amended to read:

20 "33-2-303. Filing and endorsement of contract. Every
21 Each insurance contract, cover, note, or certificate of
22 insurance procured and delivered as surplus lines insurance
23 under this part ~~shall~~ must be filed with the commissioner
24 and endorsed as "issued in an unauthorized insurer under The
25 Surplus Lines Insurance Law, under agent surplus lines

1 insurance producer license No." and "NOT covered by
2 the property and casualty guaranty fund of this state if the
3 unauthorized insurer becomes insolvent". The surplus lines
4 agent producer shall properly fill in and sign the
5 endorsement."

6 **Section 8.** Section 33-2-308, MCA, is amended to read:

7 "33-2-308. Evidence of the insurance -- changes --
8 penalty. (1) Upon placing surplus lines insurance, the
9 surplus lines agent insurance producer shall promptly issue
10 and deliver to the insured or the producing agent insurance
11 producer evidence of the insurance, consisting either of the
12 policy as issued by the insurer or, if such the policy is
13 not then available, a cover note or certificate of insurance
14 signed or countersigned by the agent insurance producer.
15 Such The cover note or certificate must show the subject,
16 coverage, conditions, and term of the insurance, the premium
17 charged and taxes collected from the insured, and the name
18 and address of the insurer. If the direct risk is assumed by
19 more than one insurer, the cover note or certificate must
20 state the name and address and proportion of the entire
21 direct risk assumed by each such insurer.

22 (2) If after the issuance and delivery of any such
23 cover note or certificate there is any change as to the
24 identity of the insurers or the proportion of the direct
25 risk assumed by the insurer as stated in the original cover

1 note or certificate or in any other material respect as to
2 the insurance coverage evidenced by the cover note or
3 certificate, the agent insurance producer shall promptly
4 issue and deliver to the insured a substitute cover note or
5 certificate accurately showing the current status of the
6 coverage and the insurers responsible thereunder under the
7 coverage.

8 (3) If a policy issued by the insurer is not available
9 upon placement of the insurance and the agent insurance
10 producer has issued and delivered a cover note or
11 certificate as hereinabove provided in subsection (2), upon
12 request therefor by the insured, the agent insurance
13 producer shall as soon as reasonably possible procure from
14 the insurer its policy evidencing such the insurance and
15 deliver such the policy to the insured in replacement of the
16 cover note or certificate theretofore previously issued.

17 (4) Any A surplus lines agent insurance producer who
18 knowingly or negligently issues or delivers a false cover
19 note or certificate of insurance or fails promptly to notify
20 the insured of any material change with respect to such the
21 insurance by delivery to the insured of a substitute cover
22 note or certificate as provided in subsection (2) ~~shall-be~~
23 is guilty of a violation of this code and upon conviction
24 ~~shall-be is~~ subject to the penalties provided by 33-1-104 or
25 to any greater applicable penalty otherwise provided by law.

(5) A surplus lines agent insurance producer may not issue or deliver any evidence of insurance or purport to insure or represent that insurance will be or has been written by any an eligible surplus lines insurer unless he has authority from the insurer to cause the risk to be insured or has received information from the insurer in the regular course of business that such the insurance has been granted."

Section 9. Section 33-2-309, MCA, is amended to read:

"33-2-309. Liability of insurer as to losses and unearned premiums. (1) As to a surplus lines risk which that has been assumed by an unauthorized insurer pursuant to The Surplus Lines Insurance Law and if the premium thereon on the surplus lines risk has been received by the surplus lines agent insurance producer who placed such the insurance, in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer ~~shall--be--deemed~~ is considered to have received the premium due to it for such coverage. The insurer ~~shall--be~~ is liable to the insured as to losses covered by such the insurance and for unearned premiums which that may become payable to the insured upon cancellation of such the insurance, whether or not in fact the agent insurance producer is indebted to the insurer with respect to such the insurance or for any other cause. This provision ~~shall~~ does not affect rights as

between the insurer and the surplus lines agent insurance producer.

(2) A payment of premium to a surplus lines agent insurance producer acting for a person other than himself in negotiating, continuing, or reviewing a policy of insurance under this part is considered to be payment to the insurer, notwithstanding any conditions or stipulations that may be inserted in the policy or contract.

(3) Each unauthorized insurer assuming a surplus lines direct risk under The Surplus Lines Insurance Law is considered ~~thereby~~ to have subjected itself to the terms of this section."

Section 10. Section 33-2-316, MCA, is amended to read:

"33-2-316. Rules. (1) The commissioner shall make or may approve and adopt reasonable rules, consistent with this part, for any or all of the following purposes:

(a) effectuation of The Surplus Lines Insurance Law;

(b) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus lines insurer or insurers; and

(c) establishment, procedures, and operations of any voluntary organization of surplus lines insurance agents producers or others designed to assist ~~such--agents~~ surplus lines insurance producers to comply with such the law.

(2) Such ~~The~~ rules ~~shall--be~~ are subject to the procedures and carry the penalty provided by 33-1-313."

Section 11. Section 33-2-317, MCA, is amended to read:

"33-2-317. **Exemptions.** The provisions of ~~this--surplus~~ ~~lines---insurance---law~~ The Surplus Lines Insurance Law controlling the placement of insurance with unauthorized insurers ~~does~~ do not apply to reinsurance or to the following insurances when ~~so~~ placed by a licensed insurance agent producer of this state:

(1) wet marine and transportation insurances;

(2) insurance on subjects located, ~~resident~~ residing, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;

(3) insurance on property or operations of railroads engaged in interstate commerce; and

(4) insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of ~~such the~~ aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of ~~such the~~ aircraft."

Section 12. Section 33-2-708, MCA, is amended to read:

"33-2-708. **Fees and licenses.** (1) The Except as provided in 33-17-212(2), the commissioner shall collect in

advance and the persons ~~so~~ served shall ~~so~~ pay to the commissioner the following fees ~~and--licenses~~:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (1)(b) ~~below~~) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with ~~such the~~ application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers \$ 300.00

(B) foreign insurers 300.00

(ii) annual continuation of certificate of authority ..
..... 300.00

(iii) reinstatement of certificate of authority
..... 25.00

(iv) amendment of certificate of authority 50.00

(b) articles of incorporation:

(i) filing original articles of incorporation of a domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to

1 be paid to the secretary of state by a domestic corporation
 2 25.00
 3 (c) filing bylaws or amendment thereto to bylaws where
 4 required 10.00
 5 (d) filing annual statement of insurer, other than as
 6 part of application for original certificate of authority ..
 7 25.00
 8 (e) resident agent's insurance producer's license:
 9 (i) application for original license, including
 10 issuance of license, if issued ~~{life-and/or-disability}~~
 11 15.00
 12 (ii) ~~application--for---original---license,---including~~
 13 ~~issuance--of--license,--if--issued--{other--than--life--and/or~~
 14 ~~disability}-----15.00~~
 15 ~~{iii}-appointment-of-agent, each insurer-----10.00~~
 16 ~~{iv} annual renewal, each insurer of license .. 10.00~~
 1715.00
 18 ~~{v}{iii} temporary license 10.00 15.00~~
 19 ~~{vi}{iv} amendment of license (excluding additions~~
 20 ~~thereto to license) or reissuance of master license~~
 21 10.00 15.00
 22 (f) nonresident agent's insurance producer's license:
 23 (i) application for original license, including
 24 issuance of license, if issued ~~{life-and/or-disability}~~
 25 100.00

1 (ii) ~~application---for---original---license,---including~~
 2 ~~issuance-of-license,--if--issued--{other--than--life--and/or~~
 3 ~~disability}-----10.00~~
 4 ~~{iii}-appointment-of-agent, each insurer-----10.00~~
 5 ~~{iv} annual renewal, each insurer of license .. 10.00~~
 6100.00
 7 ~~{v}{iii} amendment of license (excluding additions~~
 8 ~~thereto to license) or reissuance of master license 10.00~~
 9 (g) solicitor's license:
 10 ~~{i}-application--for---original---license,---including~~
 11 ~~issuance-of-license,--if--issued-----15.00~~
 12 ~~{ii}-annual-renewal-of-license-----15.00~~
 13 ~~{iii}-appointment-of-solicitor-----10.00~~
 14 ~~{h} examination for license as agent--or-solicitor~~
 15 ~~insurance producer, each examination 15.00~~
 16 ~~{i}{h} surplus lines agent insurance producer license:~~
 17 (i) application for original license and for issuance
 18 of license, if issued 50.00
 19 (ii) annual renewal of license 50.00
 20 ~~{j}{i} adjuster's license:~~
 21 (i) application for original license and for issuance
 22 of license, if issued 15.00
 23 (ii) annual renewal of license 15.00
 24 ~~{k}{j} insurance vending machine license, each~~
 25 machine, each year 10.00

1 ~~f~~t(k) commissioner's certificate under seal (except
 2 when on certificates of authority or licenses) 10.00
 3 ~~f~~m(l) copies of documents on file in the
 4 commissioner's office, per page50
 5 ~~f~~n(m) policy forms:
 6 (i) filing each policy form 25.00
 7 (ii) filing each application, rider, endorsement,
 8 amendment, insert page, schedule of rates, and clarification
 9 of risks 10.00
 10 (iii) maximum charge if policy and all forms submitted
 11 at one time or resubmitted for approval within 180 days
 12 100.00
 13 (2) The commissioner shall promptly deposit with the
 14 state treasurer to the credit of the general fund of this
 15 state all fines and penalties, those amounts received
 16 pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees
 17 and examination and miscellaneous charges received pursuant
 18 to Title 33, chapter 11, part 1, that are collected by him
 19 pursuant to Title 33 and the rules adopted ~~thereunder~~ under
 20 Title 33.
 21 (3) All fees are considered fully earned when
 22 received. In the event of overpayment, only those amounts in
 23 excess of \$10 will be refunded.
 24 (4) All fees and examination and miscellaneous
 25 charges, except fines or penalties or those amounts received

1 pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by
 2 the commissioner pursuant to Title 33 and the rules adopted
 3 ~~thereunder~~ under Title 33 must be deposited in the insurance
 4 regulatory trust account pursuant to 17-2-121 through
 5 17-2-123."

6 **Section 13.** Section 33-7-101, MCA, is amended to read:
 7 "33-7-101. Scope of chapter -- provisions applicable.
 8 (1) Except as ~~herein~~ provided in this section, societies
 9 ~~shall--be~~ are governed by this chapter and ~~shall--be~~ are
 10 exempt from all other provisions of the insurance laws of
 11 this state, not only in governmental relations with the
 12 state but for every other purpose. No law hereafter enacted
 13 ~~shall--apply~~ applies to ~~them~~ societies unless they ~~be~~ are
 14 expressly designated ~~therein~~ in the law.

15 (2) In addition to the provisions contained in this
 16 chapter, other chapters and provisions of this title ~~shall~~
 17 apply to fraternal benefit societies to the extent
 18 applicable and not in conflict with the express provisions
 19 of this chapter and the reasonable implications ~~thereof~~ of
 20 this chapter, as follows: parts 17-27-37 through 47 and 7 of
 21 chapter 1; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 13;
 22 33-3-308; 33-15-502; chapter 17; chapter 18; chapter 20; and
 23 chapter 22."

24 **Section 14.** Section 33-8-213, MCA, is amended to read:
 25 "33-8-213. (Temporary) Exemption from agent insurance

1 producer appointment requirements. (1) For purposes of the
2 plan:

3 (a) an insurer that has entered into an agreement as
4 provided in 33-8-212 may accept applications for insurance
5 coverage from any agent insurance producer even though that
6 agent insurance producer has not been appointed by the
7 insurer; and

8 (b) an agent insurance producer may place business, as
9 to any type of insurance for which he is licensed at the
10 time, with any insurer participating in the plan even though
11 the agent insurance producer has not been appointed as an
12 agent insurance producer by that insurer.

13 ~~{2}--An--insurer--that--issues--insurance--coverage--upon--an~~
14 ~~application--submitted--by--an--agent--who--has--not--been--appointed~~
15 ~~by--the--insurer--shall--pay--the--agent--a--commission--in~~
16 ~~conformity--with--the--insurer's--filed--rates,--rating--plans,--or~~
17 ~~forms--for--the--kind--of--insurance--effected--~~

18 {3}(2) An agent insurance producer who countersigns a
19 policy, when a countersignature is required by 33-17-1111,
20 ~~shall must~~ be paid a countersignature commission as provided
21 in 33-17-1113. (Terminates July 1, 1989--sec. 22, Ch. 11,
22 Sp. L. March 1986.)"

23 **Section 15.** Section 33-17-101, MCA, is amended to
24 read:

25 "33-17-101. Scope of chapter. (1) The purpose of this

1 chapter is to govern the qualifications and procedures for
2 licensing insurance producers.

3 (2) This chapter ~~shall apply as~~ applies to all stock,
4 mutual, and reciprocal insurers and ~~as~~ to all kinds of
5 insurance and annuities."

6 **Section 16.** Section 33-17-102, MCA, is amended to
7 read:

8 "33-17-102. Definitions. As used in this title, the
9 following definitions apply:

10 (1) An "adjuster" is "Adjuster" means a person who, on
11 behalf of the insurer, for compensation as an independent
12 contractor or as the employee of such an independent
13 contractor or for fee or commission investigates and
14 negotiates settlement of claims arising under insurance
15 contracts or otherwise acts on behalf of the insurer. The
16 term does not include a:

17 (a) licensed attorney who is qualified to practice law
18 in this state; or

19 (b) salaried employee of an insurer or of a managing
20 general agent; or

21 (c) a licensed agent insurance producer who adjusts or
22 assists in adjustment of losses arising under policies
23 issued by the insurer.

24 ~~{2}--A--"public-adjuster"--is--an--adjuster--employed--by--and~~
25 ~~representing--the--interests--of--the--insured--The--commissioner~~

may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters.

(3) An "agent" is an individual, partnership, or corporation appointed by an insurer to solicit applications for insurance or annuities or to negotiate insurance on its behalf and, if authorized to do so by the insurer, to effectuate and countersign insurance contracts.

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on such coverage.

(b) The term does not mean:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in

33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims; or

(xi) a person who adjusts or settles claims in the normal course of his practice or employment as an attorney

1 and who does not collect charges or premiums in connection
 2 with life or disability insurance or annuities.

3 (4) "Administrator license" means a document issued by
 4 the commissioner that authorizes a person to act as an
 5 administrator.

6 {4}{5} A--"consultant"--is "Consultant" means a person
 7 who for a fee examines, appraises, reviews, or evaluates an
 8 insurance policy, annuity, or pension contract, plan, or
 9 program or who makes recommendations or gives advice on an
 10 insurance policy, annuity, or pension contract, plan, or
 11 program.

12 {5}--A--"solicitor"--is--an--individual--appointed--and
 13 authorized---by---an---agent--to--solicit--applications---for
 14 insurance,--other--than---life---insurance---or---disability
 15 insurance,--as-a-representative-of-such-agent,--and-to-collect
 16 premiums--thereon-when-expressly-so-authorized-by-the-agent-

17 {6}--A--"managing-general-agent"--is--an--individual,
 18 partnership,--or--corporation--appointed--as--an-independent
 19 contractor-by-one-or-more-insurers-for-the-principal-purpose
 20 of-exercising-general-supervision-over-the-business--of--the
 21 insurer--in--this--state,--including-the-authority-to-appoint
 22 agents-for-such-insurers-and-to-terminate-such-appointments-

23 (6) "Consultant license" means a document issued by
 24 the commissioner that authorizes a person to act as an
 25 insurance consultant.

1 (7) "Controlled business" means insurance procured or
 2 to be procured by or through a person upon the life, person,
 3 property, or risks of himself, his spouse, his employer, or
 4 his business.

5 (8) "Individual" means a private or natural person, as
 6 distinguished from a partnership, corporation, or
 7 association.

8 (9) "Insurance producer", except as provided in
 9 33-17-103:

10 (a) means:

11 (i) a person who solicits, negotiates, effects,
 12 procures, delivers, renews, continues, or binds:

13 (A) policies of insurance for risks residing, located,
 14 or to be performed in this state; or

15 (B) membership contracts as defined in 33-30-101;

16 (ii) a managing general agent. For purposes of this
 17 definition, a "managing general agent" is a person who, on
 18 behalf of an insurer, exercises general supervision over the
 19 business of the insurer in this state, including the
 20 authority to contract with an insurance producer for the
 21 insurer and terminate those contracts.

22 (b) does not mean a customer service representative.
 23 For purposes of this definition, a "customer service
 24 representative" means a salaried employee or an insurance
 25 producer who assists and is responsible to the insurance

1 producer but who is not authorized to effect policies of
2 insurance.

3 (10) "License" means a document issued by the
4 commissioner that authorizes a person to act as an insurance
5 producer for the kinds of insurance specified in the
6 document. The license itself does not create actual,
7 apparent, or inherent authority in the holder to represent
8 or commit an insurer to a binding agreement.

9 (11) "Person" means an individual, partnership,
10 corporation, association, or other legal entity.

11 (12) "Public adjuster" means an adjuster employed by
12 and representing the interests of the insured."

13 **Section 17.** Section 33-17-103, MCA, is amended to
14 read:

15 "33-17-103. Exceptions and exemptions from definition
16 of agent, managing general agent, and solicitor insurance
17 producer. The definitions definition of agent, managing
18 general agent, and solicitor insurance producer contained in
19 33-17-102 shall does not be considered to include:

20 {1}--individuals employed and used by agents for the
21 performance of clerical, stenographic, and similar office
22 duties. incidental taking of an application for insurance
23 from time to time in the office of the employing agent shall
24 not constitute such an employee as an agent or solicitor if
25 the employee's compensation is not contingent upon or

1 relating to the volume of such applications, insurance, or
2 premiums;

3 {2}--a supervising salaried officer, supervising
4 salaried employee, or other person or entity controlled by
5 an insurer and compensated strictly on a salary basis by the
6 insurer, who solicits only with or in conjunction with duly
7 licensed agents of the insurer;

8 {3}--the attorney in fact of a reciprocal insurer or
9 the salaried traveling representative of a reciprocal or
10 mutual insurer not compensated on a commission basis;

11 {4}--a person who secures and forwards information for
12 the purpose of an existing group insurance contract or for
13 enrolling individuals under an existing group insurance
14 contract or issuing certificates thereunder where no
15 commission is paid for such services;

16 (1) a person who is a regularly salaried officer or
17 employee of an insurer and who is engaged in the performance
18 of usual and customary executive, administrative, or
19 clerical duties and whose duties do not include the
20 negotiation or solicitation of insurance;

21 (2) a person who is a salaried employee in the office
22 of an insurance producer and who devotes his full time to
23 clerical and administrative services, including the
24 incidental taking of insurance applications and receipt of
25 premiums in the office of his employer, if the employee does

1 not receive any commissions on the applications and his
 2 compensation is not varied by the volume of applications or
 3 premiums he takes or receives;

4 (3) a person who secures and furnishes information for
 5 the purpose of group life insurance, annuities, group or
 6 blanket accident and disability insurance or for the purpose
 7 of enrolling individuals under such plans, issuing
 8 certificates under such plans, or otherwise assisting in
 9 administering such plans, if no commission is paid for the
 10 service;

11 (4) an employer, his officers, or employees or the
 12 trustees of an employee trust plan, to the extent that the
 13 employer, officers, employees, or trustees are engaged in
 14 the administration of operation of a program of employee
 15 benefits for their own employees or the employees of their
 16 subsidiaries or affiliates if the program involves the use
 17 of insurance issued by an insurer and the employer,
 18 officers, employees, or trustees are not compensated in any
 19 manner, directly or indirectly, by the insurer issuing the
 20 contracts; or

21 (5) a person who is:

22 (a) an employee of an insurer or of an organization
 23 employed by an insurer, which insurer or organization is
 24 engaged in the inspection, rating, or classification of
 25 insurance risks or in the supervision of the training of

1 insurance producers; and

2 (b) not individually engaged in the solicitation or
 3 negotiation of insurance policies and contracts."

4 **Section 18.** Section 33-17-201, MCA, is amended to
 5 read:

6 "33-17-201. (Temporary) License required of agents,
 7 ~~managing-general-agents, and-solicitors~~ insurance producer
 8 ~~-- forms.~~ (1) No Except as provided in 33-17-103 and
 9 subsection (5) of this section, a person shall may not in
 10 this state act as or hold himself out to be an agent-or
 11 solicitor-as-to insurance producer for subjects of insurance
 12 located, resident residing, or to be performed in this state
 13 unless then licensed as ~~such-agent-or-solicitor~~ an insurance
 14 producer under this chapter.

15 ~~{2}--No-person-may-act-or--hold--himself--out--in--this~~
 16 ~~state--to--be-a-managing-general-agent-unless-licensed-as-an~~
 17 ~~insurance-agent-under-this--chapter--and--appointed--by--the~~
 18 ~~insurers-represented;~~

19 ~~{3}--No--agent--or--solicitor--shall--solicit--or--take~~
 20 ~~application-for, procure, or place-for-others--any--kind--of~~
 21 ~~insurance-as-to-which-he-is-not-then-licensed;~~

22 ~~{4}--No--agent--shall--place--any--business, other-than~~
 23 ~~coverage-of-his-own-risks, with-any-insurer-as-to--which--he~~
 24 ~~does--not--then--hold--a-validated-appointment-or-license-as~~
 25 ~~agent-under-this-chapter, except-as-provided--in--33-17-1104~~

~~as--to--life-or-disability-insurance-agents-and-in-33-8-213-~~

{5}(2) The commissioner may prescribe by rule and make available the forms required in connection with application for, issuance, continuation, or termination of ~~licenses-and~~ appointments a license.

{6}(3) Unless licensed as a life insurance agent producer as required by this section, ~~no a person shall may~~ not in this state solicit life insurance or annuities or procure applications ~~therefor~~ for life insurance or annuities or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney, relative to ~~such~~ insurance or annuities for fee, commission, or other compensation, other than as a salaried ~~bona--fide~~ full-time employee ~~so~~ counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of ~~such the~~ employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of ~~such the~~ employees.

{7}(4) A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose.

(5) A representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer, except that a license is not required of:

(a) an officer, employee, or secretary of a fraternal benefit society or of a subordinate lodge or branch of a fraternal benefit society who devotes substantially all of his time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon that number or amount of insurance contracts solicited or negotiated; or

(b) a representative of a fraternal benefit society who devotes or intends to devote less than 50% of his time to the solicitation and procurement of insurance contracts for the fraternal benefit society. A person who in the preceding calendar year has solicited and procured life insurance with a face amount in excess of \$50,000 or, in the case of any other kind or kinds of insurance that the fraternal benefit society may write, on more than 25 individuals and who has received or will receive a commission or other compensation for the insurance is presumed to be devoting or intending to devote 50% of his time to the solicitation or procurement of insurance

contracts for the fraternal benefit society. (Terminates July 1, 1989--sec. 22, Ch. 11, Sp. L. March 1986.)

33-17-201. (Effective July 1, 1989) License required of ~~agents, managing-general-agents, and-solicitors~~ insurance producer -- forms. (1) No A person ~~shall may not~~ in this state act as or hold himself out to be an ~~agent-or-solicitor~~ as-to insurance producer for subjects of insurance located, resident residing, or to be performed in this state unless then licensed as ~~such--agent--or--solicitor~~ an insurance producer under this chapter.

~~{2}--No--person--may--act--or--hold-himself-out-in-this state-to-be-a-managing-general-agent-unless-licensed--as--an insurance--agent--under--this--chapter--and-appointed-by-the insurers-represented.~~

~~{3}--No--agent--or--solicitor--shall--solicit--or--take application--for--procure--or--place-for-others-any-kind-of insurance-as-to-which-he-is-not-then-licensed.~~

~~{4}--No-agent-shall--place--any--business--other--than coverage--of--his-own-risks--with-any-insurer-as-to-which-he does-not-then-hold-a-validated--appointment--or--license--as agent--under--this-chapter--except-as-provided-in-33-17-1104 as-to-life-or-disability-insurance-agents.~~

~~{5}{2}~~ The commissioner may prescribe by rule and make available the forms required in connection with application for, issuance, continuation, or termination of ~~licenses-and~~

appointments a license.

~~{6}{3}~~ Unless licensed as a life insurance agent producer as required by this section, ~~no a person shall may~~ not in this state solicit life insurance or annuities or procure applications ~~therefor~~ for life insurance or annuities or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney, relative to such insurance or annuities for fee, commission, or other compensation, other than as a salaried ~~bona--fide~~ full-time employee ~~so~~ counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such the employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such the employees.

~~{7}{4}~~ A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose.

{5} A representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer, except that

1 a license is not required of:

2 (a) an officer, employee, or secretary of a fraternal
 3 benefit society or of a subordinate lodge or branch of a
 4 fraternal benefit society who devotes substantially all of
 5 his time to activities other than the solicitation or
 6 negotiation of insurance contracts and who receives no
 7 commission or other compensation directly dependent upon
 8 that number or amount of insurance contracts solicited or
 9 negotiated; or

10 (b) a representative of a fraternal benefit society
 11 who devotes or intends to devote less than 50% of his time
 12 to the solicitation and procurement of insurance contracts
 13 for the fraternal benefit society. A person who in the
 14 preceding calendar year has solicited and procured life
 15 insurance with a face amount in excess of \$50,000 or, in the
 16 case of any other kind or kinds of insurance that the
 17 fraternal benefit society may write, on more than 25
 18 individuals and who has received or will receive a
 19 commission or other compensation for the insurance is
 20 presumed to be devoting or intending to devote, 50% of his
 21 time to the solicitation or procurement of insurance
 22 contracts for the fraternal benefit society."

23 **Section 19.** Section 33-17-211, MCA, is amended to
 24 read:

25 "33-17-211. Application General qualifications --

1 application for license. (1)--Application--for--an--agent--or
 2 solicitor--license--must--be--made--to--the--commissioner--by--the
 3 applicant--and--be--signed--and--sworn--to--by--the--applicant--before
 4 a--notary--public--

5 (2)--The--commissioner--may--designate--the--forms--for
 6 application--for--license, which must require full answers to
 7 such questions as may reasonably be necessary--to--determine
 8 the--applicant's--identity, residence, personal history,
 9 business record, experience and training in insurance, and
 10 other--facts--as--required--by--the--commissioner--to--determine
 11 whether the applicant meets--the--applicable--qualifications
 12 for the license applied for:

13 (3)--If--for--an--agent's--license, the application must
 14 state the kinds of insurance proposed to be--transacted--and
 15 be--accompanied--by--written appointment of the applicant as
 16 agent by an authorized insurer, subject to issuance--of--the
 17 license;

18 (4)--If for a solicitor's license, the application must
 19 be--accompanied--by--written appointment--of--applicant--as
 20 solicitor by a licensed agent, subject to--issuance--of--the
 21 license;

22 (5)--If--the--applicant--for--an--agent--license--is--a
 23 partnership or corporation, the application shall--show,--in
 24 addition,--the names of all members, officers, and directors
 25 and shall designate each individual who is to--exercise--the

powers--to--be--conferred--by--the--license--upon--the--partnership
or--corporation;--Each--such--individual--so--designated--shall
furnish--information--as--to--himself;--as--part--of--the
application;--as--though--for--an--individual--license;

{6}--If--the--applicant--for--an--agent--license--is--an
agents'--association--pursuant--to--33-17-205;--the--application
must--show--the--names--and--residence--addresses--of--the
association's--officers--and--trustees;

{7}--If--for--license--as--either--agent--or--solicitor;--the
application--must--also--show--whether--applicant--was--ever
previously--licensed--to--transact--any--kind--of--insurance--in
this--state--or--elsewhere;--whether--any--such--license--was--ever
refused;--suspended;--or--revoked;--whether--any--insurer;--general
agent;--or--agent;--in--the--case--of--a--solicitor--application;
claims--applicant--to--be--indebted--to--it--and;--if--so;--the
details--thereof--and--the--defenses;--if--any;--of--the--applicant
thereto;--and--whether--applicant--ever--had--an--agency--contract
canceled--and--the--facts--thereof;

{8}--The--commissioner--shall--require--as--part--of--the
application--for--license--the--certificate--of--an--officer--or
representative--of--the--insurer--proposed--to--be--represented;--in
the--case--of--applicants--for--license--as--agent;--or--of--the
proposed--employing--agent;--in--the--case--of--applicants--for
license--as--solicitor;--as--to--whether--the--applicant--is--known
to--such--officer--or--representative;--whether--the--insurer--or

agent--has--investigated--the--character--and--business--record--of
the--applicant--and--the--uses--to--be--made--of--the--license;--if
granted;--and--his--opinion;--based--on--such--investigation;--as--to
applicant's--trustworthiness--and--competence;

{9}--All--such--applications--must--be--accompanied--by--the
applicable--license--fee;--appointment--of--agent--fee--where
applicable;--and--examination--fee--where--an--examination--is
required--under--33-17-212;--all--in--the--respective--amounts
stated--in--33-2-708: (1) An individual applying for a
license shall apply on a form specified by the commissioner
and declare under penalty of refusal, suspension, or
revocation of the license that statements made in the
application are true, correct, and complete to the best of
the individual's knowledge and belief. Before approving the
application, the commissioner shall verify that the
individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for
refusal, suspension, or revocation set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each
kind of insurance for which the individual has applied;

(e) is a resident of this state or of another state
that grants similar privileges to residents of this state;

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which he applies to be licensed and is reasonably familiar with the provisions of this code which govern his operations as an insurance producer; and

(h) if applying for a license as to life or disability insurance:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state.

(2) A person acting as an insurance producer shall obtain a license. A person shall apply for a license on a form specified by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an

individual listed in the license.

(c) the person has designated a licensed officer responsible for compliance by the person with the insurance laws and rules of this state;

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of incorporation under 35-1-203 or 35-2-203.

(3) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement. The president and secretary of the association

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1 shall apply for the license in the name of the association,
 2 and the commissioner shall issue the license to the
 3 association in its name alone. The fee for the license is
 4 the same as that required by 33-2-708 for the license of an
 5 insurance producer. The commissioner may, after a hearing
 6 with notice to the association, revoke the license if he
 7 finds that continuation of the license is not in the public
 8 interest or that a ground listed in 33-17-1001 exists.

9 (4) An insurance producer using an assumed business
 10 name shall register the name with the commissioner before
 11 using it."

12 **Section 20.** Section 33-17-212, MCA, is amended to
 13 read:

14 "33-17-212. Examination required -- exceptions --
 15 fees. (1)-After-completion-and-filing-of-the-application-for
 16 license-as-required-under-33-17-211, the commissioner shall
 17 subject each applicant for license as agent or solicitor,
 18 unless exempted therefrom under subsection (5) below, to an
 19 examination as to his competence to act as such agent or
 20 solicitor. The commissioner may either conduct the
 21 examination or arrange for the examination to be conducted
 22 by a testing service, which shall recover the cost of the
 23 examination from the applicant. (1) Except as provided in
 24 subsection (7), an individual applying for a license shall
 25 pass a written examination. The examination must test the

1 knowledge of the individual concerning each kind of
 2 insurance listed in subsection (6) for which application is
 3 made, the duties and responsibilities of an insurance
 4 producer, and the insurance laws and rules of this state.
 5 The examination must be developed and conducted under rules
 6 adopted by the commissioner.

7 (2) The commissioner may conduct the examination or
 8 make arrangements, including contracting with an outside
 9 testing service, for administering the examination and
 10 collecting the fees required by 33-2-708. The commissioner
 11 may arrange for the testing service to recover the cost of
 12 the examination from the applicant.

13 (3) Each individual applying for an examination shall
 14 remit the fees required by 33-2-708.

15 (4) An individual who fails to appear for the
 16 examination as scheduled or fails to pass the examination
 17 may reapply for an examination and shall remit all required
 18 fees and forms before being rescheduled for another
 19 examination.

20 (5) If the applicant is a partnership or
 21 corporation, the examination shall be so taken by each
 22 individual who is to be named in the license as having
 23 authority to act for the applicant in its insurance
 24 transactions under the license shall take the examination.

25 (6) Examination of an applicant for an agent's a

license ~~shall~~ must cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance; ~~for~~ For the purposes of this provision, "marine" property insurance ~~shall-be-deemed-to-be included-in-"property"~~ includes marine insurance;

(d) casualty insurance;

~~(e)--vehicle-insurance;~~

~~(f)~~ (e) surety insurance;

~~(g)~~ (f) credit life and disability insurance;

~~(h)~~ (g) title insurance.

~~(4)--Examination-of-an-applicant--for--a--solicitor's license--shall--cover-all-the-kinds-of-insurance--other-than life--as-to-which-the-appointing-agent-is-licensed--~~

~~(5)(7)~~ This section ~~shall~~ does not apply to, and no such an examination ~~shall-be~~ is not required of:

(a) any an individual lawfully licensed as an agent-or solicitor insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and thereafter continuing to be ~~so~~ licensed;

(b) any an applicant for license covering the same

kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months ~~next~~ immediately preceding the date of application unless ~~such-previous-license-was the commissioner has~~ suspended, revoked, or ~~continuation-of~~ refused by--the--commissioner to continue the previous license, except that ~~the--provisions--of~~ this subsection ~~(5)(b)-do~~ (b) does not apply to a title agents insurance producer, as defined in 33-25-105;

(c) any an applicant for license as nonresident agent, ~~subject--to--reciprocal-arrangements-as-provided-for-in-this code~~ insurance producer;

~~(d)--all-applicants-for-license-as-agent-for-an-insurer that-confines-its-business-in-this--state--substantially--to the--insuring--of--the--property--interests--and--risks-of farmers--if-exempted-from-examination-by--the--commissioner, in-his-discretion--upon-written-request-of-the-insurer;~~

~~(e)(d)~~ any an applicant for an agent's a license to sell all-risk federal crop insurance if the applicant provides certification from an appropriate governmental agency to the commissioner that he is qualified to sell such the insurance;

~~(f)(e)~~ (e) transportation ticket agents of common carriers applying for license to solicit and sell only:

(i) accident insurance ticket policies; or

24

(ii) insurance of personal effects while being carried as baggage on such a common carrier, as incidental to their duties as such transportation ticket agents;

~~(g)(f)~~ agents¹-associations an association applying for license under 33-17-205 33-17-211;

~~(h)(g)~~ a mechanical breakdown insurance agents producer.

(h) an individual who, within 60 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and which is not covered under the license held in the other state."

Section 21. Section 33-17-213, MCA, is amended to read:

"33-17-213. Conduct of examinations. (1) The commissioner shall make any examination required under 33-17-212 available to applicants with reasonable frequency and at places in this state reasonably accessible to the applicants.

~~(2)--All-the-kinds-of-insurance-or-classes-thereof,--as~~

~~referred-to-in-33-17-212(3),-which-the-applicant-proposes-to transact--under-the-license-applied-for-shall-be-included-in the-same-examination-~~

~~(3)(2)~~ The commissioner shall assure that the examinations are conducted in a fair and impartial manner and without unfair discrimination as between individuals examined.

~~(4)(3)~~ The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind or kinds of insurance.

~~(5)(4)~~ The examination of a title agent insurance producer, as defined in 33-25-105, must include but is not limited to questions pertaining to the search and examination of title to real property, insurance principles relating to title insurance, and the fiduciary duties and procedures of escrows, settlements, and closings of real estate transactions."

Section 22. Section 33-17-214, MCA, is amended to read:

"33-17-214. Issuance of license -- contents. (1) The commissioner shall promptly issue the a license applied-for to the a person qualified-therefor-in-accordance--with--this chapter pursuant to 33-17-211 and 33-17-212. There-is-a license-for-life-or--disability--insurance--and--a--separate

1 ~~license---for---kinds---of---insurance---other---than---life---or~~
2 ~~disability.~~

3 (2) The license ~~shall~~ must state the name and address
4 of the licensee, personal identification number, date of
5 issue issuance, general conditions relative to expiration or
6 termination, kind of insurance covered, and such other
7 information as the commissioner considers proper necessary.

8 (3) The license of a partnership, or corporation,
9 ~~shall~~ or association must also state the name of each
10 individual authorized to exercise the license powers.

11 ~~{4}--The-license-of-a-solicitor-shall--state--the--name~~
12 ~~and-address-of-the-agent-to-be-represented.~~

13 (4) Each license remains in effect, unless suspended
14 or revoked, as long as the fees required by 33-2-708 are
15 paid.

16 (5) An individual who allows his license to lapse may,
17 within 12 months from the due date of the unpaid annual fee,
18 apply for the same license without having to pass a written
19 examination if he pays a penalty in the amount of twice the
20 unpaid annual fee.

21 (6) A person shall inform the commissioner in writing
22 of a change of address within 30 days of the change."

23 **Section 23.** Section 33-17-216, MCA, is amended to
24 read:

25 **"33-17-216. Temporary agent----licenses insurance**

1 producer license -- fee. (1) The commissioner may issue a
2 temporary license ~~as--agent~~ to or with respect to an
3 individual qualified ~~therefor~~ for the temporary license only
4 as to age, residence, and trustworthiness and without
5 requiring ~~such the~~ individual to take an examination, in the
6 following cases:

7 (a) to the surviving spouse or next of kin or to the
8 administrator or executor, or the employee of ~~such the~~
9 administrator or executor, of a licensed agent insurance
10 producer upon ~~such-agent's~~ the insurance producer's death;

11 (b) to the spouse, next of kin, employee, or legal
12 guardian of a licensed agent insurance producer disabled by
13 injury or physical or mental illness;

14 (c) to an employee of a firm partnership, or officer
15 or employee of a corporation, licensed as agent an insurance
16 producer, upon the death or disability of an individual
17 designated in the license to exercise the powers ~~thereof~~ of
18 an insurance producer;

19 (d) to the designee of a licensed agent insurance
20 producer entering upon active service in the armed forces of
21 the United States of America;

22 (e) in any other circumstance in which the
23 commissioner finds that the public interest will best be
24 served by issuing such a license.

25 (2) The temporary license ~~shall~~ must be issued upon

1 application filed with the commissioner in such the form and
2 containing such the information as the commissioner may
3 reasonably require and upon payment of the applicable fee as
4 stated provided in 33-2-708.

5 (3) The temporary license ~~shall~~ must be for a period
6 of not over 90 days, subject to extension by the
7 commissioner in his discretion for an additional period of
8 not more than 90 days, except that such a temporary license
9 issued pursuant to subsection (1)(a) may be continued
10 without payment of an additional fee until the executor or
11 administrator disposes of the insurance business, but not to
12 exceed a period of 15 months. A temporary license issued to
13 the next of kin under such subsection (1)(a) may not be
14 extended for an additional term after the appointment and
15 qualification of ~~such-an~~ the administrator or executor.

16 (4) The fee paid for the temporary license may be
17 applied upon the fee required for a permanent license issued
18 to the licensee upon or prior to expiration of the temporary
19 license and covering the same kinds of insurance."

20 **Section 24.** Section 33-17-217, MCA, is amended to
21 read:

22 "33-17-217. Limitations and rights under temporary
23 license. (1) The commissioner ~~shall~~ may not issue more than
24 one temporary license, to or with respect to the same
25 individual to be ~~so~~ licensed, within any 12-month period.

1 (2) The temporary license may cover the same kinds of
2 insurance for which the ~~agent-thereby~~ insurance producer
3 being replaced was licensed.

4 (3) As to a temporary ~~agent's~~ insurance producer's
5 license issued on account of the death or disability of an
6 agent insurance producer, the licensee may ~~so~~ represent all
7 of the insurers last represented by such the deceased or
8 disabled ~~agent-and-without-the-making-of-new-appointment--of~~
9 ~~such--licensee--by-such-insurers~~ insurance producer, but the
10 licensee ~~shall~~ may not be ~~appointed--as--to--any--additional~~
11 ~~insurer--or~~ licensed for an additional kind of insurance
12 under ~~such-a~~ the temporary license. ~~This-provision-shall-not~~
13 ~~be-deemed-to-prohibit-termination-of-its-appointment-by--any~~
14 ~~insurer--~~

15 (4) A temporary licensee ~~shall--have~~ has the same
16 license powers and duties as under a permanent license."

17 **Section 25.** Section 33-17-221, MCA, is amended to
18 read:

19 "33-17-221. Licensing insurance vending machines as
20 ~~solicitors.~~ (1) A licensed resident agent insurance producer
21 may solicit applications for and issue policies of personal
22 travel accident insurance by means of mechanical vending
23 machine machines supervised by him and placed at airports,
24 railroad stations, bus stations, and similar places where
25 transportation tickets are sold and of convenience to the

traveling public, if the commissioner finds that:

(a) the policy to be sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through a mechanical vending machines machine, and use of such a mechanical vending machine therefor to sell or issue a policy in a particular proposed location would be of material convenience to the public;

(b) the type of mechanical vending machine proposed to be used is reasonably suitable and practical for the purpose;

(c) reasonable means are provided for informing the prospective purchaser of any such policy of the coverage and restrictions of the policy; and

(d) reasonable means are provided for refund to the applicant or prospective applicant of money inserted in a defective machines mechanical vending machine and for which no insurance or a less amount than that paid for is actually received.

(2) As to each such mechanical vending machine to be so used to sell or issue a policy, the commissioner shall issue to the agent insurance producer a special mechanical vending machine license. The license shall must specify the name and address of the insurer and agent insurance producer, the name of the policy to be so sold or issued through the mechanical vending machine, the serial number of

the mechanical vending machine, and the place where the machine is--to--be--in--operation will operate. The license shall-be is subject to annual continuation, expiration, suspension, or revocation coincidentally with that of the agent insurance producer. The commissioner shall also revoke the license as-to-any of a mechanical vending machine as--to which if he finds that the conditions upon which the machine was licensed, as referred to in subsection (1), no longer exist. The license fee shall-be is as stated provided in 33-2-708 for each license year or part thereof of the year for each respective mechanical vending machine. Proof of the existence of a subsisting license shall must be displayed on or about each such mechanical vending machine in use in such the manner as that the commissioner may reasonably require."

Section 26. Section 33-17-301, MCA, is amended to read:

"33-17-301. Adjuster's Adjuster license -- qualifications -- catastrophe adjustments -- public adjuster. (1) No A person shall may not in this state act as or hold himself out to be an adjuster unless then licensed therefor as an adjuster under this chapter. Application A person shall apply for an adjuster license shall-be-made to the commissioner according to forms as--prescribed--and furnished--by-him the commissioner prescribes and furnishes. The commissioner shall issue the adjuster license as to

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1 individuals qualified ~~therefor~~ to be licensed as an adjuster
 2 upon payment of the license fee ~~stated~~ provided in 33-2-708.

3 (2) To be licensed as an adjuster, the applicant must
 4 ~~be-qualified-therefor-as-follows:~~

5 (a) must be an individual 18 years of age or more;

6 (b) must be a resident ~~in-and~~ of Montana or resident
 7 of another state ~~which~~ that will permit residents of Montana
 8 regularly to act as adjusters in ~~such~~ the other state;

9 (c) must be a full-time salaried employee of a
 10 licensed adjuster or a graduate of a recognized law school
 11 or ~~must~~ have had experience or special education or training
 12 as to the handling of loss claims under insurance contracts
 13 of sufficient duration and extent reasonably to make him
 14 competent to fulfill the responsibilities of an adjuster;

15 (d) must be trustworthy and of good character and
 16 reputation;

17 (e) ~~must~~ shall have and maintain in this state an
 18 office accessible to the public and keep ~~therein~~ in the
 19 office the usual and customary records pertaining to
 20 transactions under the license. This provision ~~shall~~ does
 21 not ~~be-deemed-to~~ prohibit maintenance of ~~such~~ the office in
 22 the home of the licensee.

23 (3) A firm partnership or corporation, whether or not
 24 organized under the laws of this state, may be licensed as
 25 an adjuster if each individual who is to exercise the

1 adjuster license powers is separately licensed or is named
 2 in the firm partnership or corporation adjuster license and
 3 is qualified ~~as~~ for an individual adjuster license ~~as~~
 4 adjuster. An additional full license fee ~~shall~~ must be paid
 5 ~~as-to~~ for each individual in excess of one ~~so~~ named in the
 6 firm partnership or corporation adjuster license to exercise
 7 its powers.

8 (4) ~~No---such---adjuster's~~ An adjuster license or
 9 qualifications ~~shall-be~~ are not required ~~as-to--any~~ for an
 10 adjuster who is sent into this state by and on behalf of an
 11 insurer or adjusting firm partnership or corporation for the
 12 purpose of investigating or making adjustments of a
 13 particular loss under an insurance policy or for the
 14 adjustment of a series of losses resulting from a
 15 catastrophe common to all ~~such~~ losses.

16 (5) An adjuster license continues in force until
 17 expired, suspended, revoked, or terminated. The license is
 18 subject to annual payment to the commissioner of the renewal
 19 fee required by 33-2-708, accompanied by a written request
 20 for renewal.

21 (6) The commissioner may adopt rules providing for the
 22 examination, licensure, bonding, and regulation of public
 23 adjusters."

24 **Section 27.** Section 33-17-401, MCA, is amended to
 25 read:

1 "33-17-401. Nonresident agent insurance producer --
2 reciprocity. (1) A nonresident person may apply for a
3 license if:

4 (a) the person meets the requirements of 33-17-211(2);

5 (b) the person is licensed in the state of his
6 residence to act as insurance producer for the kind or kinds
7 of insurance for which he applies for licensing in this
8 state; and

9 (c) the person's state of residence issues a similar
10 license to a resident of this state for the same kind or
11 kinds of insurance for which the person is qualified in this
12 state.

13 (2) The commissioner may license a nonresident
14 individual without written examination if the insurance
15 department in the individual's state of residence certifies
16 that:

17 (a) the individual either has passed a written
18 examination for each kind of insurance applied for or was
19 licensed prior to the time a written examination was
20 required in the individual's state of residence; and

21 (b) is currently licensed and in good standing.

22 (3) The commissioner may issue only a nonresident
23 license to a person, partnership, or corporation otherwise
24 qualified under this code but not a resident of this state
25 and--only--if--pursuant--to--the--laws--of--the--state--of--his

1 residence--a--similar--privilege--is--extended--to--persons
2 resident-in-Montana.

3 (4) If, by the laws or rules of another state, a
4 limitation of rights and privileges, conditions precedent,
5 or any other requirements are imposed upon a resident of
6 this state who is a nonresident licensee of the other state
7 and the limitation, conditions, or requirements are in
8 addition to or in excess of those imposed on nonresident
9 persons under this chapter, the same limitation, conditions,
10 or requirements must be imposed upon the residents of the
11 other state.

12 (5) If a nonresident insurance producer's state of
13 residence suspends, revokes, or terminates his insurance
14 license in that state, his Montana nonresident license
15 automatically terminates and the nonresident insurance
16 producer shall notify the commissioner that his state of
17 residence has suspended, revoked, or terminated his
18 insurance license in that state."

19 **Section 28.** Section 33-17-404, MCA, is amended to
20 read:

21 "33-17-404. Countersigning coverage of residents.
22 Except as provided in 33-17-1111, a nonresident agent--shall
23 insurance producer may not sign or countersign policies
24 covering subjects of insurance residing, located, or to be
25 performed in Montana."

30

Section 29. Section 33-17-405, MCA, is amended to read:

"33-17-405. Service of process -- commissioner as agent insurance producer. Application-for-and-acceptance-of a--license--as-a--nonresident---agent---shall---constitute irrevocable---appointment---of---the---commissioner--as--the attorney-in-fact-of--said--licensee--to--accept--service--of process--issued--in--Montana--in--any--action--or--proceeding against-the-licensee-arising-out-of-the-licensing-or-out--of transactions--under-the-license--All-process-shall-be-served in-duplicate-upon-the-commissioner-together-with--a--fee--of \$5:--The--commissioner-shall-then-promptly-forward-a-copy-of the-service-by-registered-or-certified-mail-to-the--licensee at--his--last--known-address:--Such-service-shall-constitute personal-service-upon-the--licensee: A nonresident person shall file with the commissioner the required forms appointing the commissioner and his successors in office as the nonresident person's agent upon whom process in a legal proceeding against the nonresident person may be served and shall agree that such process has the same legal force and validity as personal service of process upon the nonresident person. The commissioner shall, within 3 working days after receiving process, forward, at the nonresident person's address of record, a copy of the process by certified mail to the person for whom he has received the process."

Section 30. Section 33-17-406, MCA, is amended to read:

"33-17-406. Nonresident agent insurance producer subject to insurance code. All A nonresident licensees-shall be insurance producer is subject to the provisions of the Montana Insurance Code as though a resident of this state, unless otherwise provided."

Section 31. Section 33-17-407, MCA, is amended to read:

"33-17-407. Nonresident licensee insurance producer to pay taxes -- annual report required. (1) A nonresident licensee insurance producer is subject to personal income, business income, or corporate license taxes for all income earned on insurance policies issued to cover subjects or risks residing, located, or to be performed in Montana and written within the boundaries of this state.

(2) A nonresident licensee insurance producer shall make-a-written-report--to--the--commissioner file annually within--45-days-following-the-end-of-each-calendar-year--The report-must-contain-a-listing-of--all--business--written-on subjects--or--risks--located--or--performed--in-Montana--The report-must-be-in-a-form-prescribed-by-the-commissioner--and must--include--but--not--be-limited-to-a-listing-of-company, policy-number,--premium--earned,--and--commission--earned a Montana income tax return as required in Title 15."

1 **Section 32.** Section 33-17-411, MCA, is amended to
2 read:

3 "33-17-411. Penalty. A nonresident ~~licensee~~ insurance
4 producer who violates ~~any a~~ condition of his Montana license
5 or ~~any a~~ provision of this part is subject to a fine by the
6 commissioner of up to \$50,000 for each ~~such~~ violation and
7 may, at the discretion of the commissioner, have his Montana
8 nonresident license revoked or suspended for a period of up
9 to 5 years."

10 **Section 33.** Section 33-17-502, MCA, is amended to
11 read:

12 "33-17-502. Prohibition on holding out as consultant
13 -- receiving fee. (1) ~~Any A~~ person not licensed as an
14 insurance consultant in this state who identifies or holds
15 himself out to be an insurance consultant without having
16 been licensed as an insurance consultant under this part or
17 ~~any a~~ person who uses any other designation or title ~~which~~
18 that is likely to mislead the public and holds himself out
19 in any manner as having particular insurance qualifications
20 other than those for which he may be otherwise licensed or
21 otherwise qualified is guilty of a misdemeanor and upon
22 conviction shall be fined \$1,500.

23 (2) ~~Any A~~ person not licensed as an insurance
24 consultant with respect to the relevant kinds of insurance
25 who receives ~~any a~~ fee for examining, appraising, reviewing,

or evaluating any insurance policy, annuity or pension
contract, plan, or program or who ~~shall--make~~ makes
recommendations or ~~give gives~~ advice with regard to any of
the above without first having been licensed by the
commissioner as an insurance consultant is guilty of a
misdemeanor and upon conviction shall be fined \$1,500.

(3) Nothing in this part applies to:

(a) licensed attorneys at law in this state acting in
their professional capacity;

(b) an actuary or a certified public accountant who
provides information, recommendations, advice, or services
in his professional capacity if neither he nor his employer
receives any compensation directly or indirectly on account
of any insurance, bond, annuity or pension contract that
results in whole or part from that information,
recommendation, advice, or services; or

(c) a ~~duty~~ licensed casualty insurance ~~agent~~ producer
who accepts a fee from an insured for placement through the
state compensation insurance fund as provided in 33-18-212."

17 **Section 34.** Section 33-17-503, MCA, is amended to
18 read:

19 "33-17-503. Application -- fee -- expiration. (1)
20 Before ~~an insurance consultant's~~ a consultant license is
21 issued or renewed, the prospective licensee shall:

(a) properly file in the office of the commissioner a

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written application on forms the commissioner prescribes;
and

(b) pay a fee of \$50.

(2) ~~Every--consultant's~~ Each consultant license ~~shall~~
~~expire expires~~ on May 31 next following the date of issue."

Section 35. Section 33-17-504, MCA, is amended to
read:

"33-17-504. Issuing license -- limitations. The
commissioner may issue ~~an---insurance--consultant's~~ a
consultant license to ~~any-natural-person~~ an individual who
has complied with the requirements of this chapter with
respect to either life insurance, meaning all of those kinds
of insurance authorized in 33-1-207, 33-1-208, 33-20-1001,
33-21-103, 33-22-501, and 33-22-601, or general insurance,
meaning all of those kinds of insurance authorized in
33-1-206, 33-1-207, 33-1-209 through 33-1-212, and 33-1-221
through 33-1-229, as specified in ~~such the~~ license."

Section 36. Section 33-17-505, MCA, is amended to
read:

"33-17-505. Qualification -- fee. (1) In order to
determine the competency of ~~every~~ an applicant for a
consultant license ~~as---an---insurance--consultant~~, the
commissioner shall require the applicant to pass an
examination.

(2) The fee for taking ~~such-an~~ the consultant license

examination ~~shall-be~~ is \$50. The commissioner shall deposit
all fees collected in the general fund. The fee for taking a
second or subsequent examination ~~shall~~ may be no more than
the cost of administering ~~such the~~ examination, not to
exceed \$50."

Section 37. Section 33-17-506, MCA, is amended to
read:

"33-17-506. Grounds for refusal to issue license. The
commissioner may refuse to issue ~~an-insurance-consultant's~~ a
consultant license if, in his judgment, the applicant is not
trustworthy and competent to act as a consultant, ~~or~~ has
given cause for revocation or suspension of a license, ~~or~~
has failed to comply with any prerequisite for the issuance
of a license."

Section 38. Section 33-17-507, MCA, is amended to
read:

"33-17-507. Revocation. The commissioner may revoke or
suspend ~~any-insurance-consultant's~~ a consultant license for
a period he determines if, after notice and hearing as
specified in this chapter, he determines that the licensee:

(1) has violated any provision of or any obligation
imposed by the insurance law or has violated any law in the
course of his dealings as ~~a~~ an insurance consultant;

(2) has made a material misstatement in application
for a ~~consultant's~~ consultant license;

(3) has been guilty of fraudulent or dishonest practices; or

(4) has demonstrated his incompetency or untrustworthiness to act as an insurance consultant."

Section 39. Section 33-17-511, MCA, is amended to read:

"33-17-511. Consideration for services only on written memorandum. No A person licensed as an insurance consultant under this part may not receive any a fee for examining, appraising, reviewing, or evaluating any an insurance policy, bond, annuity or pension or profit-sharing contract, plan, or program or for making recommendations or giving advice with regard to any of the above unless the compensation is based upon a written memorandum signed by the party to be charged and specifying or clearly defining the amount or extent of the compensation. A An insurance consultant shall retain a copy of every memorandum or contract shall-be-retained-by-the-licensee for not less than 3 years after those services have been fully performed."

Section 40. Section 33-17-512, MCA, is amended to read:

"33-17-512. Limitation on type of consideration. No A person licensed as an insurance consultant may not receive any compensation, direct or indirect, as a result of the sale of insurance or annuities to or the use of securities

or trusts in connection with pensions for any a person to whom any the licensee has performed any a related consulting service for which he has received a fee or contracted to receive a fee within the preceding 12 months."

Section 41. Section 33-17-513, MCA, is amended to read:

"33-17-513. Restrictions on insurers recommended by licensee. No A person licensed as an insurance consultant under this part may not recommend or encourage the purchase of insurance, annuities, or securities from any an authorized insurer in which he or any member of his immediate family holds an executive position or holds a substantial interest."

Section 42. Section 33-17-602, MCA, is amended to read:

"33-17-602. Written agreement required. (1) No A person may not act as an administrator without a written agreement between the person and the insurer. The written agreement ~~shall~~ must be retained as part of the official records of both the administrator and the insurer for the duration of the agreement and for 5 years thereafter. The written agreement ~~shall~~ must contain provisions which that include the requirements of 33-17-612 through 33-17-617 insofar as these requirements relate to the functions performed by the administrator.

(2) The agreement ~~shall~~ must contain a provision with respect to the underwriting or other standards pertaining to the business underwritten by such the insurer.

(3) Whenever a policy is issued to a trustee, a copy of the trust agreement and any amendments ~~thereto-shall~~ to it must be furnished to the insurer by the administrator and ~~shall~~ be retained as part of the official records of both the administrator and the insurer for the duration of the policy and for 5 years thereafter."

Section 43. Section 33-17-603, MCA, is amended to read:

"33-17-603. Certificate of registration. (1) Except as provided in 33-17-604, ~~no a~~ a person may not act as or hold himself out to be an administrator in this state unless he holds a certificate of registration as an administrator.

(2) An application for a certificate of registration must be accompanied by a fee of \$100. The commissioner ~~of insurance~~ shall issue the certificate unless he finds that the applicant is not competent, trustworthy, financially responsible, or of good personal and business reputation or that the applicant has had a previous application for ~~an insurance~~ a license denied for cause within 5 years.

(3) The certificate of registration is renewable annually on the date of issue. A request for renewal must be accompanied by a renewal fee of \$100.

(4) The certificate of registration may be suspended or revoked if, after notice and hearing, the commissioner finds that the administrator has violated any of the requirements of this part or that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

(5) Unless the certification requirement is waived, ~~any-administrator~~ a person who acts as ~~such an administrator~~ without ~~the a~~ certificate of registration is subject to a fine of not less than \$500 or more than \$1,500."

Section 44. Section 33-17-604, MCA, is amended to read:

"33-17-604. Waiver of certification requirements. The commissioner ~~of--insurance~~ may waive the requirements of 33-17-603 for any person or class of persons. The factors taken into account in granting ~~such a~~ a waiver ~~shall~~ include but are not limited to:

(1) whether the person acting as an administrator is primarily in a business other than that of administrator;

(2) whether the financial strength and history of the organization indicates stability in its continuity of doing business;

(3) whether the regular duties being performed as an administrator are such that the covered persons are not likely to be injured by a waiver of ~~such the~~ the requirements."

1 **Section 45.** Section 33-17-611, MCA, is amended to
2 read:

3 "33-17-611. Maintenance of information. For the
4 duration of the agreement required by 33-17-602 and for 5
5 years thereafter, each administrator shall maintain at its
6 principal administrative office adequate books and records
7 of all transactions between the administrator, insurers, and
8 insured persons. These books and records ~~shall~~ must be
9 maintained in accordance with prudent standards of insurance
10 recordkeeping. The commissioner ~~of--insurance~~ shall have
11 access to these books and records for examination, audit, or
12 inspection. Any trade secrets contained in the books and
13 records, including but not limited to the identity and
14 addresses of policyholders and certificate holders, ~~shall-be~~
15 are confidential, except that the commissioner may use ~~such~~
16 the information in any proceedings instituted against the
17 administrator. The insurer retains the right to continuing
18 access to those books and records of the administrator
19 sufficient to permit the insurer to fulfill all of its
20 contractual obligations to insured persons, subject to any
21 restrictions in the written agreement between the insurer
22 and the administrator."

23 **Section 46.** Section 33-17-613, MCA, is amended to
24 read:

25 "33-17-613. Collection of charges and premiums. (1)

1 All insurance charges or premiums collected by an
2 administrator on behalf of or for an insurer ~~or-insurers~~ and
3 return premiums received from ~~such the~~ insurer ~~or-insurers~~
4 are held by the administrator in a fiduciary capacity.
5 These funds ~~shall~~ must be immediately remitted to the person
6 ~~or--persons~~ entitled thereto to them or ~~shall~~ must be
7 deposited promptly in a fiduciary bank account established
8 and maintained by the administrator. If deposited charges or
9 premiums were collected on behalf of or for more than one
10 insurer, the administrator shall require the bank in which
11 the fiduciary account is maintained to keep records clearly
12 recording the deposits in and withdrawals from ~~such the~~
13 account on behalf of or for each insurer. The administrator
14 shall promptly obtain and keep copies of all these records
15 and, upon request of an insurer, shall furnish the insurer
16 with copies of the records pertaining to deposits and
17 withdrawals on behalf of or for the insurer.

18 (2) The administrator ~~shall~~ may not pay ~~any a~~ claim by
19 withdrawals from the fiduciary account. Withdrawals from the
20 fiduciary account ~~shall~~ must be made, as provided in the
21 written agreement between the administrator and the insurer,
22 for:

23 (a) remittance to an insurer entitled thereto to the
24 remittance;

25 (b) deposit in an account maintained in the name of

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1 ~~such the~~ insurer;

2 (c) transfer to and deposit in a claims paying
3 account, with claims to be paid as provided in 33-17-615;

4 (d) payment to a group policyholder for remittance to
5 the insurer entitled thereto to the payment;

6 (e) payment to the administrator of its commission,
7 fees, or charges; or

8 (f) remittance of return premiums to the person or
9 persons entitled thereto to the premium."

10 **Section 47.** Section 33-17-1001, MCA, is amended to
11 read:

12 "33-17-1001. Suspension, revocation, or refusal of
13 license. (1) Except as provided in 33-17-411, the
14 commissioner may suspend for not more than 12 months, or may
15 revoke or refuse to continue any, or may deny an application
16 for a license issued under this chapter or any surplus lines
17 agent insurance producer license if, after hearing held on
18 not less than 10 days' advance notice by certified mail of
19 such the hearing and of the charges against the licensee
20 given as provided in 33-1-314(3) to the licensee ~~and to the~~
21 ~~insurers--represented,--as to an agent, or to the appointing~~
22 ~~agent, as to a solicitor~~, he finds that ~~as to~~ the licensee
23 ~~any one or more of the following causes exist~~ or applicant
24 has:

25 (a) ~~for any cause~~ engaged or is about to engage in an

1 act or practice for which issuance of the license could have
2 been refused had it then existed and been known to the
3 commissioner;

4 (b) ~~for obtaining~~ obtained or attempting attempted to
5 obtain ~~any--such a~~ license through misrepresentation or
6 fraud;

7 (c) ~~for violation--of--or--noncompliance~~ violated or
8 failed to comply with ~~any applicable~~ a provision of this
9 code or ~~for willful violation of any lawful~~ has violated a
10 rule, subpoena, or order of the commissioner or of the
11 commissioner of any state;

12 (d) ~~for--misappropriation--or--conversion~~ improperly
13 withheld, misappropriated, or converted to his own use or
14 ~~illegal withholding of moneys~~ money or property belonging to
15 policyholders, insurers, beneficiaries, or others and
16 received in conduct of business under the license;

17 (e) ~~conviction, by final judgment,~~ been convicted of a
18 felony involving moral turpitude;

19 (f) ~~if~~ in the conduct of his affairs under the
20 license, ~~the licensee--has~~ used fraudulent, coercive, or
21 dishonest practices or has shown himself to be incompetent,
22 untrustworthy, financially irresponsible, or a source of
23 injury and loss to the public;

24 (g) made a materially untrue statement in the license
25 application;

1 (h) misrepresented the terms of an actual or proposed
2 insurance contract;

3 (i) been found guilty of an unfair trade practice or
4 fraud prohibited by Title 33, in chapter 18;

5 (j) had his license suspended or revoked in any other
6 state;

7 (k) forged another's name to an application for
8 insurance;

9 (l) cheated on an examination for a license; or

10 (m) knowingly accepted insurance business from a
11 person who is not licensed.

12 (2) The license of a partnership or corporation may be
13 suspended, revoked, or refused, ~~also-for-any-of-such-causes~~
14 ~~as-relate-to-any~~ or denied if a reason listed in subsection
15 (1) applies to an individual designated in the license to
16 exercise its powers.

17 (3) The commissioner may suspend, revoke, or refuse to
18 continue a license under subsection (1)(e) without
19 conducting an investigation pursuant to 37-1-203 or making a
20 written finding pursuant to 37-1-204."

21 **Section 48.** Section 33-17-1002, MCA, is amended to
22 read:

23 "33-17-1002. Procedure following suspension or
24 revocation. (1) Upon suspension or revocation of ~~any-such a~~
25 license, the commissioner shall forthwith immediately notify

1 the licensee thereof of the suspension or revocation either
2 in person or by mail addressed to the licensee at his
3 address last of record with the commissioner. Notice by mail
4 ~~shall-be-deemed is~~ effectuated when so the notice is mailed.
5 ~~The-commissioner-shall-give-like-notice-to-the-insurers~~
6 ~~represented-by-the-agent,-in-the-case-of-an-agent's-license,~~
7 ~~and-to-the-agent-by-whom-appointed,-in-the-case-of-a~~
8 ~~solicitor's-license.~~

9 ~~{2}--Suspension-or-revocation--of--the--license--of--an~~
10 ~~agent--shall-automatically-revoke-or-suspend-the-licenses-of~~
11 ~~all-solicitors-appointed-by-him.~~

12 ~~{3}{2}~~ The commissioner ~~shall~~ may not again issue a
13 license under this code to ~~or--as-to-any a~~ person whose
14 license has been revoked until after expiration of 1 year
15 and thereafter not until ~~such the~~ person again qualifies
16 therefor for a license in accordance with ~~the--applicable~~
17 ~~provisions--of~~ this code. If the commissioner revokes a
18 person's license, the commissioner may refuse to issue a
19 license to the person for up to 5 years after the
20 revocation. A person whose license has been revoked twice
21 ~~shall is~~ not again be eligible for any license under this
22 code.

23 ~~{4}{3}~~ If the license of a partnership or corporation
24 is ~~so~~ suspended or revoked, no member of ~~such the~~
25 partnership or officer or director of ~~such the~~ corporation

1 ~~shall~~ may be licensed or be designated in ~~any~~ a license to
 2 exercise ~~the~~ its powers thereof during the period of ~~such~~
 3 the suspension or revocation unless the commissioner
 4 determines upon substantial evidence that ~~such~~ the member,
 5 officer, or director was not personally at fault and did not
 6 acquiesce in the matter on account of which the license was
 7 suspended or revoked."

8 **Section 49.** Section 33-17-1003, MCA, is amended to
 9 read:

10 "33-17-1003. Return of license. (1) All licenses
 11 issued under this chapter, although issued and delivered to
 12 the licensee ~~agent,--solicitor,~~ insurance producer or
 13 adjuster, ~~shall~~ are at all times be the property of the
 14 state of Montana. Upon any expiration, termination,
 15 suspension, or revocation of the license, the licensee or
 16 other person having possession or custody of the license
 17 shall ~~forthwith~~ immediately deliver it to the commissioner
 18 either by personal delivery or by mail.

19 (2) As to any license lost, stolen, or destroyed while
 20 in the possession of ~~any--such~~ a licensee or person, the
 21 commissioner may accept in lieu of return of the license the
 22 affidavit of the licensee or ~~other~~ person responsible for or
 23 involved in the safekeeping of ~~such~~ the license, concerning
 24 the facts of ~~such~~ the loss, theft, or destruction."

25 **Section 50.** Section 33-17-1004, MCA, is amended to

1 read:

2 "33-17-1004. Acting as insurance ~~agent,--solicitor,~~
 3 producer or adjuster without license -- penalty. Except as
 4 provided in 33-17-411, a person, ~~partnership,--association,~~
 5 ~~or--corporation~~ who ~~or--which~~, in this state, acts as an
 6 insurance ~~agent,--solicitor,~~ producer or adjuster without
 7 having authority to do so by virtue of a license issued and
 8 in force pursuant to ~~the--provisions--of~~ this chapter is
 9 guilty of a misdemeanor and upon conviction shall be fined
 10 \$500 or imprisoned in the county jail for 90 days, or both."

11 **Section 51.** Section 33-17-1101, MCA, is amended to
 12 read:

13 "33-17-1101. Place of business -- display of license
 14 -- records. (1) Every resident ~~agent~~ insurance producer
 15 shall have and maintain a place of business in this state
 16 accessible to the public. A nonresident ~~agent~~ insurance
 17 producer may maintain a place of business in this state. An
 18 ~~agent's~~ insurance producer's place of business must be ~~that~~
 19 wherein a place in which he principally conducts
 20 transactions under his license. The street address of ~~such~~
 21 the place ~~shall~~ must appear upon the license, ~~and the~~
 22 ~~licensee shall--promptly--notify--the--commissioner--of--any~~
 23 ~~change--in--his--street--or--mailing--address.~~ Nothing in this
 24 section prohibits maintenance of ~~such~~ the place of business
 25 in the licensee's place of residence.

(2) The license of--the--licensee-and-the-license-of each-solicitor-appointed-by-and--representing--the--licensee must be conspicuously displayed in such the place of business at the street address shown on the license in a part thereof of the place of business customarily open to the public.

(3) The agent insurance producer shall keep at his place of business complete records pertaining to transactions under his license and--the--licenses--of--his solicitors, for a period of at least 3 years after completion of the respective transactions, except that a title agents insurance producer, as defined in 33-25-105, shall retain records as provided in 33-25-214 and 33-25-216."

Section 52. Section 33-17-1102, MCA, is amended to read:

"33-17-1102. Reporting and accounting for premiums -- misappropriation. (1) All insurance premiums or return premiums received by an agent--or--solicitor insurance producer must be held in a separate trust account. The licensee insurance producer shall at all times act in a fiduciary capacity, and the-agent-or-solicitor shall, in the applicable regular course of business, account for and pay the same insurance premiums or return premiums he receives to the insured, insurer, or agent insurance producer

entitled thereto to them. Except for a title agent insurance producer as defined in 33-25-105, an agent insurance producer may deposit and commingle in the same such separate deposit all such funds belonging to others so long as the amount of such the deposit so held for each respective other person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any agent--or--solicitor insurance producer not lawfully entitled thereto to the funds may not divert or appropriate such the funds or any portion thereof of the funds to his own use.

(3) An insurance producer who unlawfully diverts or appropriates insurance premiums or return premiums to his own use is, upon conviction, guilty of theft and is punishable as provided by law."

Section 53. Section 33-17-1103, MCA, is amended to read:

"33-17-1103. Exchange-of-business---sharing Accepting and paying commissions, fees, or consideration -- restriction. (1) An-agent-may, under rules adopted by the commissioner, place an insurance coverage with an insurer as to which he is not then licensed or appointed as an agent, and the insurer shall accept such business, only when placed through an agent, licensed under this chapter and appointed by the insurer. Both agents involved in such an exchange of

business--must--be--licensed--as--to--all--of--the--kinds--of
insurance--represented--by--the--coverage--so--placed;

{2}--The--agents--involved--in--a--lawful--exchange--of
business--under--subsection--(1)--above--may--divide--between--them
the--commission--or--compensation--payable--on--account--of--such
coverage. (1) An insurer or insurance producer may not pay,
directly or indirectly, a commission, service fee, brokerage
fee, or other valuable consideration to a person for
services as an insurance producer unless the person
performing the service holds a valid license with regard to
the kind or kinds of insurance for which the service was
rendered at the time the service was performed. A person not
properly licensed in accordance with this chapter at the
time he performs the service as an insurance producer may
not accept a commission, service fee, brokerage fee, or
other valuable consideration for the service. This section
does not prevent payment or receipt of renewal or other
deferred commissions to or by a person entitled to receive
the payment under this section.

{3}(2) No--agent--or--solicitor--shall An insurance
producer may not directly or indirectly share his
commissions or other compensation received or to be received
by him on account of a transaction under his license with
any person not also licensed under this chapter as to the
same kind or kinds of insurance involved in such the

transactions, except as provided in 33-17-1113. This
provision ~~shall~~ does not affect payment of the regular
salaries due employees of the licensee, or the distribution
in regular course of business of compensation and profits
among members or stockholders if the licensee is a firm
partnership or corporation, or use of funds for family or
personal purposes.

{4}(3) This section does not apply as to those
transactions with surplus lines agents--which insurance
producers that are lawful under 33-2-306 or as--to--life--or
disability--insurance--placed--as--provided--in--33-17-1104."

Section 54. Section 33-17-1111, MCA, is amended to
read:

"33-17-1111. Resident agent insurance producer
required -- reciprocity -- countersignature -- records. (1)
No An authorized insurer ~~shall~~ may not issue a policy
covering a subject of insurance resident residing, located,
or to be performed in Montana unless:

(a) the policy is written through a licensed agent,
resident insurance producer residing in Montana, ~~of the~~
insurer;

(b) the policy is written through a licensed
nonresident agent insurance producer and, if a
countersignature would be required by the resident state of
the nonresident agent insurance producer upon a Montana

1 resident agent insurance producer writing business in the
2 resident state of such the nonresident agent insurance
3 producer, the policy or countersignature endorsement
4 attached thereto to the policy is countersigned by a Montana
5 resident licensed agent insurance producer; or

6 (c) the policy is written through a licensed
7 nonresident agent insurance producer who is a resident of a
8 state that does not require countersignatures.

9 (2) ~~No--such~~ A countersignature ~~shall~~ may not be made
10 in blank. The agent insurance producer may by express
11 written authorization given in advance delegate to his
12 salaried clerical employee the power to ~~so~~ countersign in
13 the name of the ~~agent--such--contracts~~ insurance producer
14 those policies or classes of ~~contracts--as--are~~ policies
15 designated in such the authorization ~~so--long-as if~~ the
16 initials of such the employee are written below the agent's
17 insurance producer's name on such the countersignature, but
18 the ~~agent--shall~~ insurance producer may not thereby delegate
19 or have power to delegate to ~~any-other~~ a person the power or
20 authority to bind an insurer with respect to any a risk not
21 already bound by the agent insurance producer or other
22 person having clear authority from the insurer ~~so~~ to bind.
23 The ~~agent--shall-be~~ insurance producer is responsible for all
24 of the acts of such the employee within the scope of the
25 authority ~~so~~ delegated. The agent insurance producer shall

1 keep a record of ~~each-and~~ all coverages countersigned by him
2 or by his authority.

3 (3) This section ~~shall~~ does not apply to:

4 (a) reinsurance;

5 (b) life insurance, disability insurance, or annuity
6 contracts;

7 (c) insurance of the rolling stock, vessels, or
8 aircraft of any common carrier in interstate or foreign
9 commerce or of any vehicle principally garaged and used in
10 another state or covering any liability or other risks
11 incident to the ownership, maintenance, or operation ~~thereof~~
12 of any common carrier or vehicle;

13 (d) insurance of property in course of transportation
14 interstate or in foreign trade or any liability or risk
15 incident ~~thereto to the insurance~~;

16 (e) insurance of wet marine and transportation risks;

17 (f) countersignature to policies issued through agents
18 insurance producers compensated only by salary or issued by
19 insurers not using agents insurance producers in the general
20 solicitation of business;

21 (g) bid bonds, as required under Title 18, chapter 1,
22 part 2.

23 (4) Violation of this section ~~shall~~ does not
24 invalidate ~~any-contract~~ a policy otherwise valid as between
25 the insurer and the insured."

Section 55. Section 33-17-1112, MCA, is amended to read:

"33-17-1112. Salaried personnel not to countersign -- exception for emergencies. (1) With respect to policies subject to countersignature requirements under 33-17-1111, only a licensed ~~agent--of--the--insurer--resident~~ insurance producer residing in Montana, whose compensation as ~~such agent an insurance producer~~ is by commission computed as a percentage of the premium received on each ~~such~~ policy written, ~~shall have~~ has power to countersign as required by 33-17-1111.

(2) No A branch manager, state agent, special agent, general or any other like supervisory agent, or any other representative of the insurer, whose compensation ~~therefrom from the insurer~~ is in whole or in part by salary, ~~shall does not~~ have power to countersign ~~such~~ policies or countersignature endorsements ~~thereto to~~ policies; except that in an emergency where it is necessary that an insurance policy be issued without delay and no resident ~~agent-of-the insurer insurance producer~~ having power to execute the policy is then reasonably available, then any other individual having authority ~~therefor~~ from the insurer may execute such the policy in the first instance in order to make a contract between the insurer and the obligee or the insured if such the policy is subsequently countersigned in

fact by ~~such~~ a resident agent insurance producer."

Section 56. Section 33-17-1113, MCA, is amended to read:

"33-17-1113. Policies originating outside state -- commission of resident agent insurance producer. (1) As to policies a policy or endorsements--~~thereto--which-are an endorsement to a policy that is~~ subject to countersignature requirements under 33-17-1111 contracted for or otherwise originating outside the boundaries of Montana, ~~there--shall be-payable-to-the-countersigning-agent, resident-in-Montana,~~ a commission ~~which--shall of~~ not be less than 5% of the premium charged and received but not ~~to-exceed more than~~ 50% of the commission paid by the insurer is payable to the countersigning insurance producer, so that a record within Montana will be kept of such the business and so that the state may better receive any tax required by law to be paid with respect to such the insurance. If, however, the originating ~~agent--or--broker insurance producer~~ or the insurer desires additional service to be rendered during the term of the policy, then the compensation for such the countersigning resident ~~agent-shall insurance producer~~ must be in such an additional amount as is fixed by mutual agreement of such the parties in interest.

(2) If pursuant to the laws of another state the countersigning agents insurance producers of that state

retain as commission or compensation with respect to business originated by Montana agents insurance producers more than 5% of the premium, then the Montana agents insurance producers who countersign policies representing business originated by ~~agents-or-brokers~~ insurance producers of such the other state shall charge and receive a commission in an amount not less than that ~~so~~ received by countersigning agents insurance producers of the other state."

Section 57. Section 33-17-1114, MCA, is amended to read:

"33-17-1114. Policies issued at home or branch offices. Nothing in 33-17-1111 through 33-17-1113 ~~shall prevent--any~~ prevents an insurer from issuing any a policy, as to which the ~~resident---agent---or~~ countersignature requirement of 33-17-1111 ~~is-applicable~~ applies, at its home or branch office, but ~~such-policies-shall~~ the policy must be subsequently countersigned, where otherwise required, by ~~its agent--resident~~ an insurance producer residing in Montana. The ~~insurer's-licensed--agent--resident~~ insurance producer residing in Montana shall receive the commission on such the policy when the insurance premium is paid. This section does not apply ~~as~~ to life insurance."

Section 58. Section 33-18-401, MCA, is amended to read:

"33-18-401. False ~~applications,--claims~~ application, claim, and proofs proof of loss -- penalty. ~~Any-solicitor, agent~~ An insurance producer, examining physician, applicant, or other person who knowingly or willfully makes ~~any a~~ false or fraudulent statement or representation in or with reference to ~~any an~~ application for insurance or, for the purpose of obtaining any money or benefit, knowingly or willfully presents or causes to be presented a false or fraudulent claim or any proof in support of such a claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, ~~shall--be~~ is guilty of a misdemeanor felony and upon conviction shall be ~~punished-by-a-fine-of-not-less-than-\$250-or~~ fined not more than \$1,000 \$5,000 or ~~by-imprisonment-in-the-county-jail-for~~ not--less-than-3-months-or imprisoned not more than 6-months 10 years, or both ~~such--fine--and--imprisonment--at--the~~ discretion-of-the-court."

Section 59. Section 33-25-202, MCA, is amended to read:

"33-25-202. Sharing of rate proceeds. Title insurers and agents insurance producers may share rate proceeds between or among themselves in any combination and may

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exchange--business--and-share accept commissions as provided in 33-17-1103, unless the sharing of rate proceeds is an unlawful rebate or inducement under this title or is a payment of a forwarding fee or finders fee."

Section 60. Section 33-25-214, MCA, is amended to read:

"33-25-214. Underwriting standards -- record retention. (1) A title insurer may not issue a title insurance policy unless it, its title agent insurance producer, or an approved attorney has conducted a reasonable search and examination of the title and made a determination of insurability of title in accordance with sound underwriting practices. The title insurer or title agent must insurance producer shall preserve and retain in its files evidence of the examination of title and determination of insurability. The title insurer or title agent insurance producer may keep original evidence or may establish in the regular course of business a system of recording, copying, or reproducing evidence by any process that accurately and legibly reproduces, or forms a durable medium for reproducing, the contents of the original.

(2) Subsection (1) does not apply to:

(a) a title insurer assuming liability through a contract of reinsurance; or

(b) a title insurer acting as coinsurer if one of the

other coinsuring title insurers has complied with subsection (1).

(3) Except as allowed by rules adopted by the commissioner, ~~no~~ a title insurer or title agent insurance producer may not knowingly issue an owner's title insurance policy or commitment to insure unless all outstanding enforceable recorded liens or other interests against the property title to be insured are shown.

(4) An insurer issuing a policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured arising ~~thereunder~~ under the policy."

Section 61. Section 33-25-301, MCA, is amended to read:

"33-25-301. Refusal, suspension, or revocation of title agent's insurance producer's license. (1) In addition to the causes provided in 33-17-1001, the commissioner may refuse to license a person as a title agent insurance producer or may suspend or revoke a title agent's insurance producer's license if, after a hearing held after notice as required in 33-17-1001, he finds that the license applicant or licensee has:

(a) made a material misstatement in an application for a title agent insurance producer license;

(b) commingled funds belonging to applicants, escrow

participants, or others;

(c) intentionally misrepresented the terms of a title insurance policy to an applicant or policyholder or has misrepresented material facts to, concealed material facts from, or made false statements to a party to an escrow, settlement, or closing transaction;

(d) in the conduct of his affairs under his title agent's insurance producer's license, used coercive practices or shown himself to be financially irresponsible;

(e) aided, abetted, or assisted another person in violating the provisions of this title or a rule adopted by the commissioner.

(2) The commissioner may impose any other appropriate penalty provided for in this title.

(3) The commissioner may refuse, suspend, or revoke the license of a ~~firm, corporation, or other business entity~~ person licensed as a title agent insurance producer for the actions described in subsection (1) of any individual designated in the license to exercise its powers."

Section 62. Section 33-25-302, MCA, is amended to read:

"33-25-302. Disapproval of agency contracts. (1) The commissioner may disapprove a title agency contract between a title agent insurance producer and title insurer, upon appropriate notice to the parties to the contract, if he

finds that the contract, together with all amendments and related documents:

(a) does not provide for adequate monitoring of the agent's insurance producer's financial transactions; or

(b) provides for inadequate, unreasonable, or excessive amounts to be paid to or retained by the title agent insurance producer. Factors the commissioner may consider in this determination include but are not limited to the agent's insurance producer's duties under the contract and the general level of amounts paid to or retained by other title agents insurance producers in the state performing or assuming comparable duties.

(2) No ~~A~~ person may not act as a title agent insurance producer under an agency contract that has been disapproved by the commissioner."

Section 63. Section 33-25-401, MCA, is amended to read:

"33-25-401. Prohibited practices -- referrals -- splitting charges -- exemptions. (1) Except as provided in subsection (2), no ~~a~~ person may not:

(a) give or accept a fee, rebate, or thing of value pursuant to an agreement or understanding that title insurance business will be referred to a title agent insurance producer; or

(b) give or accept a portion, split, or percentage of

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1 a charge made or received for title insurance business in
2 connection with a transaction involving real property in
3 this state, other than for services actually performed.

4 (2) (a) A person may pay a return on an investment,
5 based on a percentage of an ownership interest in a title
6 insurance agency, if:

7 (i) at or prior to the time of a referral, a
8 disclosure of the existence of the arrangement is made to
9 the person being referred and, in connection with the
10 referral, the person is provided a written estimate of the
11 charge or range of charges generally made by the title agent
12 insurance producer to which the person is referred; and

13 (ii) the person is not required to use a particular
14 agent insurance producer.

15 (b) The following arrangements are not a violation of
16 subsection (2)(a)(ii):

17 (i) an arrangement that requires a buyer, borrower, or
18 seller to pay for the services of an attorney, credit
19 reporting agency, or real estate appraiser chosen by a
20 lender to represent the lender's interest in a real estate
21 transaction; or

22 (ii) an arrangement by which an attorney or law firm
23 represents a client in a real estate transaction and issues
24 or arranges for the issuance of a policy of title insurance
25 in the transaction directly as agent insurance producer or

1 through a separate corporate title insurance agency that may
2 be established by that attorney or law firm and operated as
3 an adjunct to his or its law practice.

4 (c) Failure to disclose a controlled business
5 relationship is not a violation of subsection (2)(a)(i) if
6 the failure was not intentional and resulted from a bona
7 fide error, proven by a preponderance of the evidence.

8 (3) This section does not prohibit:

9 (a) the payment of a fee to an attorney for services
10 actually rendered or by a title agent insurance producer for
11 services actually performed in the issuance of a title
12 insurance policy; or

13 (b) payment of a bona fide salary, compensation, or
14 other payment for goods or facilities actually furnished or
15 for services actually performed."

16 **Section 64.** Section 33-25-403, MCA, is amended to
17 read:

18 "33-25-403. Prohibited practices -- producer and
19 associates -- prohibition of favored agent insurance
20 producer or insurer. No A producer or associate may not,
21 directly or indirectly, require as a condition, agreement,
22 or understanding of providing another person a loan, loan
23 extension, credit, sale, property, contract, lease, or
24 service that the other person obtain title insurance of any
25 kind from a particular title insurer or title agent

1 insurance producer. No A title insurer or title agent
 2 insurance producer may not knowingly participate in a plan
 3 or transaction prohibited by this section."

4 **Section 65.** Section 33-22-1703, MCA, is amended to
 5 read:

6 "33-22-1703. Definitions. As used in this part, the
 7 following definitions apply:

8 (1) "Emergency services" means services provided after
 9 suffering an accidental bodily injury or the sudden onset of
 10 a medical condition manifesting itself by acute symptoms of
 11 sufficient severity (including severe pain) that without
 12 immediate medical attention the subscriber or insured could
 13 reasonably expect that:

14 (a) his health would be in serious jeopardy;
 15 (b) his bodily functions would be seriously impaired;

16 or

17 (c) a bodily organ or part would be seriously damaged.

18 (2) "Health benefit plan" means the health insurance
 19 policy or subscriber arrangement between the insured or
 20 subscriber and the health care insurer that defines the
 21 covered services and benefit levels available.

22 (3) "Health care insurer" means:

23 (a) an insurer that provides disability insurance as
 24 defined in 33-1-207;

25 (b) a health service corporation as defined in

1 33-30-101;

2 (c) a health maintenance organization as defined in
 3 33-31-102;

4 (d) a fraternal benefit society as defined in
 5 33-7-102;

6 (e) an administrator as defined in ~~33-17-601~~
 7 33-17-102; or

8 (f) any other entity regulated by the commissioner
 9 that provides health coverage.

10 (4) "Health care services" means health care services
 11 or products rendered or sold by a provider within the scope
 12 of the provider's license or legal authorization or services
 13 provided under Title 33, chapter 22, part 7.

14 (5) "Insured" means an individual entitled to
 15 reimbursement for expenses of health care services under a
 16 policy or subscriber contract issued or administered by an
 17 insurer.

18 (6) "Preferred provider" means a provider or group of
 19 providers who have contracted to provide specified health
 20 care services.

21 (7) "Preferred provider agreement" means a contract
 22 between or on behalf of a health care insurer and a
 23 preferred provider.

24 (8) "Provider" means an individual or entity licensed
 25 or legally authorized to provide health care services or

1 services covered within Title 33, chapter 22, part 7.

2 (9) "Subscriber" means a certificate holder or other
3 person on whose behalf the health care insurer is providing
4 or paying for health care coverage."

5 NEW SECTION. Section 66. Repealer. Section 33-17-202,
6 33-17-204, 33-17-205, 33-17-218, 33-17-231, 33-17-232,
7 33-17-402, 33-17-403, 33-17-601, and 33-17-1104, MCA, are
8 repealed.

9 NEW SECTION. Section 67. Extension of authority. Any
10 existing authority to make rules on the subject of the
11 provisions of [this act] is extended to the provisions of
12 [this act].

13 NEW SECTION. Section 68. Codification instruction.
14 [Section 4] is intended to be codified as an integral part
15 of Title 33, chapter 17, and the provisions of Title 33,
16 chapter 17, apply to [section 4].

17 NEW SECTION. Section 69. Saving clause. [This act]
18 does not affect rights and duties that matured, penalties
19 that were incurred, or proceedings that were begun before
20 [the effective date of this act].

21 NEW SECTION. Section 70. Severability. If a part of
22 [this act] is invalid, all valid parts that are severable
23 from the invalid part remain in effect. If a part of [this
24 act] is invalid in one or more of its applications, the part
25 remains in effect in all valid applications that are

1 severable from the invalid applications.

2 NEW SECTION. Section 71. Effective date. [This act]
3 is effective January 1, 1990.

-End-

STATUS SHEET

51st LEGISLATIVE SESSION

Business & Economic Development COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
B652	2/13	2/17	2/17	2/17							
645	↓	2/15	2/15			2/15					
669	↓	2/17 2/21	2/17 2/21	TABLED)		2/21					
670	↓	2/17	2/17			2/17					
736	2/16	3/1	3/13			3/13					
683	2/14	2/17	2/17	2/17							
690	↓	2/17	2/17	2/17							
696	↓	2/16	2/17		2/17						
705	2/15	2/17	2/17		2/17						
706	↓	2/17	2/17	2/17							
711	↓	2/17	2/17	2/17							
733	2/16	2/17	2/17	2/17							
734	↓	2/17	2/17			2/17					
B 4	2/21	2/28	2/28					2/28			

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

HOUSE COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By Rep. Bob Pavlovich, on February 17, 1989, at
7:30 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Paul Verdon and Sue Pennington

Announcements/Discussion: None

DISPOSITION OF HOUSE BILL 600

Motion: Rep. Bachini moved DO PASS.

Amendments, Discussion, and Votes: None

Recommendation and Vote: HB 600 DO PASS.

DISPOSITION OF HOUSE BILL 626

Motion: Rep. Blotkamp moved DO PASS. Rep. Johnson moved an
amendment to the bill.

Discussion: Rep. Blotkamp stated that he would like to change
his vote to a DO PASS. Originally I did not want to send
out a message to MRL that we were antibusiness. Through
further testimony that I have heard and clarification, I
don't see any problem with the bill. If we can bring the
bill back so I can change my vote I would appreciate it.

Amendments, Discussion, and Votes: Rep. Johnson wants to make an
amendment to make the bill effective upon passage and
approval. The amendment DO PASS 10-5 vote.

Recommendation and Vote: HB 626 DO PASS as amended 9-7 vote.

principal and interest. Our cost on these accounts is well over \$20 per year. Rep. Simon asked the same question of Mr. Castleton. Mr. Castleton said they had not actually done an analysis on their accounts. I would say that those accounts we do service range between \$25-\$50 per year with all the individual time as well as computer time. This cost is also involved in those sold in the secondary market. It increases their costs and makes Montana less desirable.

Closing by Sponsor: Rep. Brooke said there have been amendments made to the bill, the department of commerce will not be involved and she will bring the copies to the committee secretary.

HEARING ON HOUSE BILL 734

Presentation and Opening Statement by Sponsor:

Rep. Thomas stated that his bill would generally revise the insurance agent licensing laws; directs the code commissioner to change any reference to the term "enrollment representative", "insurance agent", or "agent" to "insurance producer", to change any reference to the term "surplus lines agent" or "surplus lines insurance agent" to "surplus lines insurance producer", and to change any reference to the term "title agent" or "title insurance agent" to "title insurance producer" wherever it appears in the Montana code annotated; prohibits the grant or extension of a controlled business license; provides that misappropriation of insurance premiums or return premiums constitutes theft; allows the commissioner to revoke an insurance producer license for up to 5 years; allows for the automatic suspension, revocation, or termination of a nonresident insurance producer license upon suspension, revocation, or termination in his state of residence.

Testifying Proponents and Who They Represent:

Andy Bennett, State Auditor
Tanya Ask, MT Insurance Dept.
Roger McGlenn, IIAM
Larry Akey, MT Association Life Underwriters

Proponent Testimony:

Ms. Bennett stated that this bill is major in changes but simplifies the system and allows for a single license; as it exists today it is quite a complicated licensing system. For the past three years I have been working with the national association on this model piece of legislation. In the last year I have been working with the local Montana association in making sure that it is palatable to the association.

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See exhibit 1 for Ms. Ask's testimony.

Mr. McGlenn stated that his association stands in support of the proposed amendments.

Mr. Akey stated that his association participated along with other organizations in the task force to develop this single license bill. Like the other associations we would prefer to see the appointment process retained. We urge you to give HB 734 and HB 536 a do pass.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: Rep. Hansen asked Ms. Ask since the appointment is a stumbling block, is there anything in the bill that prevents the parent company from doing this any way? Ms. Ask said the bill's repealer section lists sections that will be repealed. There is a provision that the appointments will be stricken from Montana law.

Rep. Glaser asked Mr. Akey if the appointments can't be left as they are, you want the bill dead? Mr. Akey said he could not speak for the other associations. Life underwriters would prefer to have the appointment process in the bill. There is, in fact, model language developed by NAIC for single licensure which includes appointments. This bill does not. I can't say we would like to see this bill dead. We prefer to see single licenses out, but prefer to have the appointment process left in.

Rep. Kilpatrick asked Ms. Bennett how she felt about not having the provision for appointments. Will it destroy the bill? Ms. Bennett did not think this would destroy the bill. I see the appointment process as a collection of paper that we seldom use. If an agent sells insurance without a contract because the appointment process is no longer there, he is a fool.

Closing by Sponsor: Rep. Thomas said that the changes are not tremendous in nature. There are a couple of small amendments which we can discuss in executive session.

DISPOSITION OF HOUSE BILL 652

Motion: Rep. Hansen moved DO PASS as amended. Rep. Hansen also moved the amendments.

Recommendation and Vote: HB 617 was TABLED 11-5 vote.

DISPOSITION OF HOUSE BILL 536

Motion: Rep. Thomas moved DO PASS and moved the amendments.

Discussion: Rep. Thomas said this is the pre-education licensure bill. What this bill does is instead of adopting post education, it proposes pre-education.

Amendments, Discussion, and Votes: Rep. Thomas said there was an amendment offered to reduce the hours from 40 to 20 and I would move that amendment, wherever 40 hours is referred to, change it to 20 hours.

Recommendation and Vote: HB 536 DO PASS as amended 15-1 vote.

DISPOSITION OF HOUSE BILL 734

Motion: Rep. Thomas moved DO PASS.

Discussion: None

Amendments, Discussion, and Votes: Rep. Thomas moved to make some amendments to the bill. On page 4, line 13 and 14, strike \$300 and insert \$500. The appointment process right now requires a \$10 fee for the filing of that appointment with the commissioner's office, the language that the agents want to be reinstated would not reinstate the \$10 that the companies pay. By changing this to \$500, we make up the lost revenue for the appointment of \$10 for that filing fee. This amendment passed. Rep. Thomas said on page 16, line 6, where it has \$100, this is a renewal fee of an out-of-state agent. I would like to move to amend it to \$50 versus \$100, the reason for this is an in-state agent pays this under reciprocity. This amendment passed. Rep. THomas moved to amend on page 25, line 1 and 2, strike "but who is not authorized to affect policies of insurance". This is in the definition section on page 24, line 8, it says insurance producer, we are talking about the definition of an insurance producer. And on (b), line 22, page 24, it says this does not mean what we call a consumer service representative. Every thing this person does, the insurance producer is responsible for. This amendment passed. On page 14, line 15, change the \$300 on the annual continuation fee to \$500. This amendment passed. Refer to the front of the bill, page 2, line 7, this is the section for agent appointments by the company. The two insurance agency groups want appointments. I moved these amendments. Rep. Pavlovich asked how the department felt about the appointments? Rep. Thomas said Ms. Bennett did not want

appointments. Rep. Steppler asked if we take away the appointment, how are we going to know if an agent is licensed by a company? Rep. Thomas said he is licensed, but he has to be appointed by a company before he can be licensed. Rep. Bachini asked why some agents are opposed to the appointments? Rep. Thomas said they felt the appointment process should be included because it sets up the agency relationship for the consumer's benefit. This amendment failed.

Recommendation and Vote: HB 734 DO PASS as amended unanimously.

Rep. Hansen made a motion to take HB 539 off the table.
Rep. McCormick made a motion to table the motion by Rep. Hansen. The bill stays on the table.

ADJOURNMENT

Adjournment At: 1:15 P.M.


Rep. BOB PAVLOVICH, Chairman

BP/sp

4103.min

DAILY ROLL CALL

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 2 17 89

NAME	PRESENT	ABSENT	EXCUSED
PAVLOVICH, BOB	✓		
DeMARS, GENE	✓		
BACHINI, BOB	✓		
BLOTKAMP, ROB	✓		
HANSEN, STELLA JEAN	✓		
JOHNSON, JOHN	✓		
KILPATRICK, TOM	✓		
McCORMICK, LLOYD "MAC"	✓		
STEPPLER, DON	✓		
GLASER, BILL	✓		
KELLER, VERNON	✓		
NELSON, THOMAS	✓		
SIMON, BRUCE	✓		
SMITH, CLYDE	✓		
THOMAS, FRED	✓		
WALLIN, NORM	✓		
PAUL VERDON	✓		

ROLL CALL VOTE

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE
 DATE 2/17/89 BILL NO. 734 NUMBER

NAME	AYE	NAY
Bob Pavlovich		
Bob Bachini		
Rob Blotkamp		
Gene DeMars		
Bill Glaser		
Stella Hansen		
John Johnson		
Vernon Keller		
Tom Kilpatrick		
Lloyd McCormick		
Thomas Nelson		
Bruce Simon		
Clyde Smith		
Don Steppler		
Fred Thomas		
Norm Wallin		

TALLY

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Sue Pennington
Secretary

Bob Pavlovich
Chairman

MOTION: moved do pass as
amended

STANDING COMMITTEE REPORT

February 17, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that HOUSE BILL 734 (first reading copy -- white) do pass as amended .

Signed: Robert Pavlovich
Robert Pavlovich, Chairman

And, that such amendments read:

1. Page 14, line 13.

Strike: "\$300.00"

Insert: "\$500.00"

2. Page 14, line 14.

Strike: "300.00"

Insert: "500.00"

3. Page 14, line 16.

Strike: "300.00"

Insert: "500.00"

4. Page 16, line 6.

Strike: "100.00"

Insert: "50.00"

5. Page 25, lines 1 and 2.

Following: "producer"

Strike: remainder of line 1 and through "insurance" on line 2

Amendments to House Bill No. 734
First Reading Copy

For the Committee on Business and Economic Development

Prepared by Paul Verdon
February 17, 1989

1. Page 14, line 13.

Strike: "\$300.00"

Insert: "\$500.00"

2. Page 14, line 14.

Strike: "300.00"

Insert: "500.00"

3. Page 14, line 16.

Strike: "300.00"

Insert: "500.00"

4. Page 16, line 6.

Strike: "100.00"

Insert: "50.00"

5. Page 25, lines 1 and 2.

Following: "producer"

Strike: remainder of line 1 and through "insurance" on line 2

STANDING COMMITTEE REPORT

February 17, 1989

Page 1 of 1

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Insert: "500.00"

4. Page 16, line 6.

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Insert: "50.00"

5. Page 25, lines 1 and 2.

Following: "producer"

Strike: remainder of line 1 and through "insurance" on line 2

VISITORS' REGISTER

Business

COMMITTEE

BILL NO. 591 652 683 629
 669 670 690 705
 706 711 733 734
 736

DATE

2/17/89

SPONSOR

please put the
 bill number. Then

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
John D. Smith	MT. I.	X	
Rich Hill	PIA	734	
Roger M. Nelson	IAA	706/734	
Robert R. Kocher	105 Clinton Lane Butte	706	
Ross Gibson	173 W. Hillcrest Mile	706	
Tanya Ask	MT. I. MS. Dept	734	
Mike Young	Billings	669 Amund	
Rick Larson	Billings	669 Amund	
John C. Koch	Helena	Technical Advisor	
CLARENCE S. FRISBER	CUT BANK		X 652
George Castleman	Butte		652
GENE PHILLIPS	KALISPELL	HB 690	
Roger Tippet	Helena	669 Amund	
MIKE VARONE	Helena		629
RICHARD EMERY	HELENA	HB 733	
Leo Reynolds	Helena	HB 629	
ALAN WINTER	MISSOULA	HB 652	
J. CADBY	MT. BANKERS ASSN		HB 705 HB 652
Chuck Stearns	City of Missoula		HB 669 unless amnd

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Bus & Econ Dev. COMMITTEE

BILL NO. _____

DATE 2-17-89

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Rick Van Allen	Missoula - ^{Mont.} Bozeman	652	
Juan Starnetz	Billings	670 ^{as amended}	
San Adalberto	Missoula	670 ^{AS} Amended	
John Folsom	Aracoma	670 ^{AS} AMENDED	
Richard L. Mizek	St. Paul	670 ^{AS} AMENDED	
Chip Eason	Monteagle Sav Inst		652
LARRY AKEY	MT ASSOC LIFE UNDERWRITERS	734	
Phil Campbell	Mont. El. Assoc	669	
LARRY AKEY	MT CAR RENTAL ASSOC	66 736	
Bill Pierce	Billings		629
Jerry Singh ^{Dennis Singh}	Missoula MT		629
ED BARTELT	Helena, MT		629
Don Case	Bozeman, MT.		629
Ray Br. Lewis	MMH & RT		629
Bill Novak	MMH & RU - Billings		629
Victoria Novak			629

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

21
Hx

WITNESS STATEMENT

NAME Tanya Ask BILL NO. HB 734

ADDRESS P.O. Box 4009 (444-5237)

WHOM DO YOU REPRESENT? Montana Insurance Dept.

SUPPORT ☒ OPPOSE ☐ AMEND ☐

COMMENTS: Bill amends law to reflect the single license
concept, doing away with current agent/solicitor/enrollment
representative distinctions and introduces the concept of
insurance producer. Customer service representatives are
specifically excluded from licensure.

Insurance company appointments are removed.

Only one license will be needed for all lines of insurance.
Current law requires one license for life & disability authority and
a separate license for property & casualty.

Association licenses could be issued for life & disability
producer associations. Currently only property/casualty
associations can be licensed. (Association licenses are restricted
to writing governmental entity insurance coverage.)

Grammatical revisions are made throughout the
licensing chapter.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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5/st LEGISLATIVE SESSION

Business & Industry

COMMITTEE

a separate sheet for Senate Bills, House Bills, and Resolutions.

5

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By Chairman Gene Thayer, on March 10, 1989,
at 10:00 a.m.

ROLL CALL

Members Present: Chairman Thayer, Vice Chairman Meyer,
Senator Boylan, Senator Noble, Senator Williams,
Senator Hager, Senator McLane, Senator Weeding, Senator
Lynch

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 683

Presentation and Opening Statement by Sponsor:

Representative Marks, House District 75 said, HB 683 contained the revisions needed in the science and technology act. He stated the act provided the alliance with \$1,500,000 per year, a total of \$750,000,000 over a five year period, for financing new and standing technology based businesses in the state.

He said the bill established procedures by which the science and technology board of directors could operate the seed capital financing program. He stated the seed capital fund source was developed in the 1982 program, by which the in-state investment funds diverted a portion of the coal-severance trust fund. He said the fund had a \$24,000,000 balance right now, and would continue to receive 12 1/2% of the coal tax collected. He said the fund would continue to be used by the board of investments as a source of asset based lending through commercial banks.

Representative Marks said the alliance's use of a portion of the fund would not infringe on the current

compliance with the other boards, and would place the responsibility for regulating ski lifts with people who had the expertise.

Questions From Committee Members: Senator Boylan asked if the sunrise provision required the \$6400 fee, when they created a new board? Representative Spaeth stated the program was already in existence. and only responsibility was being transferred, so the sunrise law did not apply.

Senator Boylan stated they had just encountered similar situations that had needed attention to the sunrise provision. Mary McCue said the statutes that talked about the sunrise requirement talked about the licensing of an occupational or profession, in other words, people. She stated this was regulation of a business, and did not apply.

Closing by Sponsor: Representative Spaeth asked the committee to support the bill, because he felt it was the right direction for the ski industry to take. He said it provided the ultimate in safety for the ski areas.

DISPOSITION OF HOUSE BILL 258

Discussion: Mary McCue responded that she concurred. Representative Spaeth's amendment was a good one.

Amendments and Votes: Senator Hager made a motion line 22, page 2, be amended to read 2-9-305. Senator McLane seconded the motion. The motion Carried Unanimously.

Recommendation and Vote: Senator Hager made a motion HB 258 BE CONCURRED IN AS AMENDED. Senator Boylan seconded the motion. The motion Carried Unanimously. Senator McLane carried HB 258 on the Senate Floor.

HEARING ON HOUSE BILL 734

Presentation and Opening Statement by Sponsor:

Representative Fred Thomas, House District 62, said HB 734 established single licensure for insurance agents in Montana. He said there was a companion bill being carried by Representative Brown. He said the bill changed the name of an insurance agent to an insurance producer, which was a new model name and industry term. He stated the license would be renewed annually, instead of the current perpetual license. The bill set up a definition for a consumer service representative,

and that was a person who helped a licensed insurance producer. He said appointments from an insurance company were needed before an individual could take the insurance test, and every company who made an appointment had to file that appointment with the insurance commissioner's office and pay a \$10.00 fee.

Representative Thomas asked the committee to strip the House floor amendments. He said there was a set of amendments which would reinstate the current appointment process in the bill, and another would set up model language for perpetual versus annual licensing. He said he had made one written change to the amendments he was passing out. (See Exhibit #7)

List of Testifying Proponents and What Group They Represent:

Andrea Bennett - State Auditor & Insurance Commissioner
Susan Witte - Staff Attorney, State Auditor's Office
Rick Hill - Insurance Agency Owner, Helena, Montana
Roger McGlenn - Executive Director, Independent
Insurance Agents of Montana
Larry Akey - Montana Life Underwriters Association

List of Testifying Opponents and What Group They Represent:

None

Testimony: Andrea Bennett presented the history of HB 734. She said that Representative Thomas had called and told her the NAIC was working on a model act called the single license procedure model act. She stated that Representative Thomas had suggested the Insurance Commissioner find out about the act, and how it would work for Montana. She said she had told him Montana had been on the committee working on the bill.

Commissioner Bennett said the purpose of the single license procedure model act was to put legislation in place, so there would be a blueprint for Montana established to begin a multi-state licensing system. She said there were two parts to the multi-state system. One part was a uniform application system to be adopted by all states that wanted to be part of the multi-state licensing system. The other part was passing this act and keeping it uniform, without changes. She said that if a non-resident agent was licensed to do business in Montana, and their license had been revoked in another state, the other states had no way of knowing that individual was a licensed agent in Montana. She said the other state did not care about the revocation, because it was in

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Montana's licensing jurisdiction. Ms. Bennett said she thought Montana should know, because Montana should revoke that agent's non-resident license on the same grounds as the other state had. She said that could not be done now, because they didn't always find out about a non-resident agent having their license revoked or suspended.

Ms. Bennett said this system was patterned after language the Central Registration Depository system used within the securities industry. She said the NASD licensed all salesmen, and broker dealers, for the securities industry, and registered all securities sold in the United States and North America. She cited HB 734 as a move to nationalize insurance regulation, and as the first step toward preemption of federal regulation. She stated that to be a part of the multistate licensing system, they were actually going to have a computer system, through the NAIC, for handling all the information. She said the states needed to begin passing some uniform regulations, or federal regulation would be implemented.

She said that presently the federal government regulated securities, and as a very large federal level bureaucracy, they were not doing a very good job. She also cited their own system of insurance regulation as inefficient. She said there was a big frustration over insurance regulation, because there wasn't enough money or uniformity.

Ms. Bennett said HB 734 was absolutely a major change to licensing laws. She said the bill was written to provide for an agent to be called a producer, and required them to hold their own license. She said that presently, an agent must have a company appointment to become a licensed agent in Montana, and she felt an individual should be able to be an agent without company appointment. She said it provided for a single license, prohibited the granting or the extension of controlled business license, provided that misappropriation of insurance premiums constituted theft, and allowed for the State Insurance Commissioner to revoke an insurance producers license for up to five years. She said the bill also allowed for the automatic suspension, revocation, or termination of a non-resident insurance producer's license, if that same thing happened in the domicile state.

Commissioner Bennett said that unfortunately HB 734 had been amended on the House floor, and the appointment process had been added back in. She said

it was a very poor amendment, and if appointments were kept in, the language needed to be cleaned up. She stated the Insurance Department opposed appointments, because it resulted in their office currently collecting about 17,000 pieces of paper she felt were next to useless. She said opponents were going to say that appointments were extremely important to preventing creation of a broker's state in Montana. She said brokering was currently not allowed in Montana, but people had admitted having a brokering business anyway. She stated the new law allowed them to broker business and also to be an agent, but they would all be called producers. She said they would have a contract with a company for whatever kind of business they were doing.

Ms. Bennett said she didn't believe it was important for her department to know which company the producer sold for, because her department did not settle disputes between agents and their companies. She stated she was a strong consumer advocate when it came to insurance, and this law had worked well for the state of Illinois, and she felt it would work well for Montana. She said she hoped the committee would concur with the amendments Representative Thomas had suggested, as they would help cut red tape and allow her department to be part of multi-state licensing.

Susan Witte said HB 734 was based on a NAIC model, and was a major bill. She gave a section by section analysis of the bill, and urged passage. (See Exhibit #8)

Rick Hill said he owned an insurance agency in Helena, and served on the legislative committee for the Independent Insurance Agents of Montana, and the Professional Insurance Agents of Montana. He said he served on the task force representing the various insurance groups in the Insurance Department, and helped develop the language for this bill and the companion bill. He stated his groups supported the single licensing concept, however, there was controversy concerning appointments. The model bill, that the NAIC developed, for redefining insurance agents as producers, removed the requirement that an insurance producer have an established relationship with an insurance company. He said the significance was that currently, in Montana, an individual could only be licensed if they had a formal relationship with a company. He stated the Insurance Department had to be formally notified of that relationship, and that was done through the appointment process. He said the existing process

absolutely assured the consumer, buying insurance from a licensed agent in Montana, that person was operating on behalf of the insurance company. He said the model law removed the requirement for appointment, and removed the requirement that the insurance producer have any formal relationship with an insurance company.

Mr. Hill stated that if the appointment process was removed, the burden of proof was shifted from the insurance company to the consumer. He said that today, if a consumer bought insurance from an agent, they knew that agent was contracted to a certain company, and the company was bound by his actions. He said, that if the action was beyond the terms of the agent's contractual relationship, the consumer still had the ability to seek recovery from the company. He stated that under the new producer concept, the consumer no longer had assurance that the agent was operating on behalf of that company, and the consumer would have to prove a relationship existed, before he would be allowed to go after the insurance company. He said there was dissention in the insurance industry over that particular provision, but a majority supported appointments.

Mr Hill said another existing provision of the appointment process stated that if an insurance agent's company terminated the agent's relationship for violation of a Montana law, they were required to notify the Insurance Commissioner with documentation. He said the model act's removal of appointments, obviously removed that provision.

Mr. Hill said the present appointment process was burdensome, because every year insurance companies had to confirm, or reaffirm appointment of every agent in the state. He said the process included a requirement to pay a \$10.00 fee, which raised about one half million dollars annually. Mr. Hill said he was proposing an amendment with language suggesting perpetual appointments to be made one time only, without a requirement for reaffirmation. He said the bill provided for raising the revenue, by increasing the annual fee for the insurance companies. He said the language they proposed for optional appointments, was the language from the National Association of Insurance Commissioners. He stated other states had passed language modifying the broker agency concept to the single producer, and had retained the agency appointment process.

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Roger McGlenn said he would like to direct the committee's attention to page 25, lines 3 - 8, and page 27, lines 2 - 9. He said this was the language the task force had developed, and he felt it was extremely important to the companion nature to HB 536. He said the language provided a clear and concise definition of who must be licensed and when they must be licensed. He stated that if HB 734 passed with this language in tact, his group continued in strong support of HB 536. However, if this language or HB 734 did not pass, then they needed to oppose HB 536.

Mr. McGlenn said the Independent Insurance Agents also supported the amendments proposed by Mr. Hill. He said they felt appointments were a valuable consumer information resource that should be available through the Insurance Department. He stated the Insurance Department was responsible and received valuable information pertaining to the solvency or insolvency of insurance companies, and they thought that financial information would be valuable to the agents and their consumers. Therefore, if appointments were on file in the Insurance Department, the department could inform agents and prevent further business transactions between consumers and those companies. He said they would like the opportunity to review the appointment process and the effect to the consumer.

Larry Akey said his association supported HB 734, and they believed the appointment process provided important consumer protection. He also stated they supported Representative Thomas' amendment.

Me. Akey said, as the Commissioner's staff had indicated, there was a provision of the bill that was not in the NAIC model language. He said that provision gave the Commissioner's office the ability to suspend or revoke a license for a five year period. He said his group believed the industry and the agents in particular, desired to become more self-policing, and believed the five year revocation authority was a good provision even though it was not model language.

Mr. Akey said they were opposed to the provisions which changed knowing or willful misrepresentation from a misdemeanor to a felony. He said the language appeared in section 58, and suggested that if the five year suspension or revocation was retained, section 58 substantially changed penalties for agents. He asked the committee to strike section 58 from the bill.

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Questions From Committee Members: Senator Williams asked Representative Thomas how he felt about striking section 58?

Representative Thomas stated he would defer to the committee's wisdom on that, but Commissioner Bennett had testified to her reasons for wanting that in the bill.

Chairman Thayer asked Larry Akey what he had meant when he testified to supporting the sponsors amendments? He said the sponsor's amendments took out the language regarding appointments.

Mr. Akey said the original bill deleted the appointment process, and the House had amended the bill to reinstate appointments. He said they favored the intent of the amendment, but language in the House amendment was inadequate and probably did harm to the original intent of the bill. He said they supported the appointment process, with the model NAIC language Representative Thomas had offered.

Chairman Thayer asked Representative Thomas if the amendments he had passed out were the ones he wanted to introduce?

Representative Thomas said the amendments before them reinstated the current appointment process. He said that he favored the NAIC model language that would make the appointments perpetual. He said a lot of the interest was to eliminate as much paperwork as they could, and free up some people to do other things.

Chairman Thayer asked Representative Thomas if he could be recorded as preferring the McClure amendments as opposed to the Thomas amendments?

Representative Thomas said that would be correct.

Senator Hager asked Representative Thomas if there was an error in amendment #1.

Representative Thomas said there was a typo, and it should say lines 18 through 23, not lines 21 through 23.

Representative Thomas said, the amendments stripped the House amendments from the bill, and he had also asked Mary McCue to work on another set of amendments containing the proper language regarding the appointment process. He said he was sorry he had not clarified that fact well enough.

Chairman Thayer asked Representative Thomas why it was so important to have model language changes in our current law? He asked why model language changed the insurance agent language to read insurance producer, and why that change was so important?

Representative Thomas said the industry wanted the changes. He said that currently, anyone who handled insurance had to be licensed. He said that what they had done was draw a distinction between the person selling the coverage, that was the producer, and the person who was helping.

Senator Noble asked why they couldn't call the people who didn't sell insurance non-producers, and leave the other people as agents? He said he was concerned about the large number of changes this implied for the industry. He asked who had decided on the model language?

Rick Hill said the industry was not going to change what they said or did, so this would only pertain to the law. He said that in most cases you wouldn't change the signs or stationary or whatever.

Senator Noble asked Larry Akey if he had any explanation for the language change?

Larry Akey said NAIC was the National Association of Insurance Commissioners, and like many elected officials or appointed officials, there was a national body that developed model language. He said the intent of that model language was to try achieving as much uniformity from state to state as possible. He said the National Association of Life Underwriters, which represented independent agents, had worked with the NAIC in developing the model language. He stated that a national compromise between companies, agents, and regulators was reflected in the NAIC model language. He said that was why they appeared before the committee and said they approved of the model language, because the compromise had already been struck at the national level. He said that was also why it was important for them to retain as much model language as possible.

Senator Noble asked Andrea Bennett why they had used model language except for the one section? He asked, if they were trying to switch to the model language, why would they add other language?

Andrea Bennett said that portion of the bill was "housekeeping", and that bill had this kind of language

in it. She said the language in this bill was only to avoid having two separate parts of the law that were different.

Senator Weeding asked if the NAIC language had different appointment language than was suggested here?

Andrea Bennett said there was a model passed many years ago, and that was the language the committee was being asked to amend into this bill. She said the NAIC had passed, more recently, a model which did away with the appointment process altogether, and that was the first set of amendments Representative Thomas gave you. She said that if the committee decided they wanted to include appointments in the law, then they wanted to use the second amendment. She stated The Insurance Department was supporting the first amendment, but not the second one.

Senator Weeding asked if the latest recommendation of NAIC was for no appointments?

Andrea Bennett said yes, that was a brand new national law, and Montana was the chairman of the agent licensing committee for the NAIC and that was why it was being presented. She said the industry was supporting the new legislation, and she knew there would probably be opposition on the local level. She stated it was their intent to nationalize licensing in the United States, so the federal government didn't have to.

Chairman Thayer asked how many states had adopted similar language at this time?

Andrea Bennett answered that no other state had, except Illinois, and they were the model state.

Senator Weeding asked Roger McGlenn why he thought NAIC language, regarding appointments, should be stricken from the law?

Roger McGlenn said the industry had been discussing this issue for four or five months, and it was his understanding that the NAIC had allowed optional language to include appointments if the state so desired. He said that to his knowledge, this was the language that the task force of agents had prepared and offered to the committee. He expressed a concern that there was no certainty consumers would enjoy the same protection they had in the past, with appointments. He said they wanted the opportunity to maintain that protection. He stated they supported the language for

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the time being, and they believed it was optional language provided by the NAIC.

Senator Weeding asked what type of thing might happen, which would required that protection?

Roger McGlenn said their concern was over an individual no longer being required to have an appointment to represent an insurance company, and they understood this law did not provide any regulation prohibiting representation of any company. Mr. McGlenn said he was particularly concerned about life and health insurance, because he frequently received mailings from companies he had never heard of. He said he checked on those companies with the Insurance Department to make sure their licenses were admitted. He said that without required company appointments, he could go out and write policies for any company, and the consumer had no way of checking on his validity or the financial status of the company. He said they wanted to study their concern, on behalf of the consumers and the agents, before it was adopted as Montana law.

Chairman Thayer asked, if Montana was on the committee that was helping write and adopt this law, why did the Insurance Department want to eliminate the appointment requirement?

Andrea Bennett said she didn't want to do away with the licensing requirement, and a person would still be able to call the Insurance Department and find out who was a licensed agent. She said she wanted to do away with the appointment process, because she didn't feel it served any useful purpose. She said that an insurance producer still needed to have a contract with each company they did business with. She stated that if the appointment process was eliminated, the agent would still be able to bind coverage for a company, and the contractual law was going to prevail.

Senator Meyer asked Rick Hill if he would like to respond?

Rick Hill said there was nothing in the model act that required a contract to exist between an agent and the producer, as it was now presented. He said that as the law now stood, he was appointed to represent a company as their agent, and he did not have a contract with those companies. He said he might have a contract with the managing general agent, who interceded between the agent and the company, but none existed with the company. He said that if the model act was passed without appointments, he would not be appointed by that

company, and he would not have a company contract. He said he thought that broke the chain between the consumer and the company, and that was the concern he had.

He said the concept of brokering in brokerage states was entirely different than how the term broker was used in Montana. He said that if an agent arranged to have an occasional piece of business for a customer placed through another agent, Montana called it brokering, but it really wasn't. If an individual didn't represent himself as the agent, and explained that he was arranging another contracted agent to handle that insurance, and they were going to share the commission, that was not brokering. He said brokerage occurred when an agent went directly to a company, and arranged the insurance coverage without a formal relationship in existence.

He said that with an appointment system, if a company wanted to do business in Montana they had to make a commitment to that agent and to the state, and under a brokerage arrangement that would not happen. He said that if a company went through the process of appointing people, they wanted a contractual relationship, so they could limit what that person was going to do. He said that under a brokerage arrangement, the insurance companies could come and go as they pleased, with no contractual obligation, and he felt the insurance companies would be quick to take advantage of the situation.

Senator Weeding asked Mr. Hill if he was actually contracted?

Mr. Hill said they are appointed by the companies, not contracted, because there was an intervening managing general agent. He said there were a number of insurance companies that wrote specialized lines of insurance in Montana, and if he sold any insurance those companies carried, there was a managing general agent for that company, not an individual contract with each separate company.

Closing by Sponsor: Representative Thomas said there were many reasons to pass the bill, and they included the single licensure, and the definition of what a consumer service representative was. He said he would have the amendments ready next week. He said he thought the bill was important and they needed the committee's help in its passage.

DISPOSITION OF HOUSE BILL 734

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

DISPOSITION OF HOUSE BILL 247

Discussion: Senator Lynch presented his proposed amendments, and briefly explained them. (See Exhibit #10)

Amendments and Votes: Senator Lynch moved to Amend HB 247, with the amendments contained in exhibit #10. Senator Weeding seconded the motion. The motion Carried Unanimously.

Amendments and Votes: Senator Meyer moved to Amend HB 247 with the amendments prepared by Mary McCue, and requested by Senator Thayer. (See Exhibit #11) Senator Lynch seconded the motion.

Discussion: Mary McCue explained that as the bill was presently written, the statement of intent referred to the obstetrics crisis and the bill itself talked about lines of insurance, and there were a couple of references to policy. She said that what these amendments did was limit the scope of the bill, so that it now referred only to the line of obstetrical liability insurance in this state. She clarified it as a single kind of insurance. She stated that in each place where it said 'policy', she had changed it to 'this line' and where it said 'line' she inserted the descriptive words 'obstetrical liability'.

Mrs. McCue said section 4 was the definition portion, and amendment #10 inserted the definition Mr. Browning had brought to the hearing, which defined non-competitive. She stated the language was what had been enacted in Wyoming. She said that for the word "volatile", she had inserted "a line is considered "volatile" if rates for the line of obstetrical liability insurance have increased more than 50% during the previous year."

Mary McCue said the other significant amendment was on page 4, line 22, following the word "states", we're inserting the language "similar to Montana geographically and demographically".

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 3/10/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
<u>SENATOR DARRYL MEYER</u>	✓		
<u>SENATOR PAUL BOYLAN</u>	✓		
<u>SENATOR JERRY NOBLE</u>	✓		
<u>SENATOR BOB WILLIAMS</u>	✓		
<u>SENATOR TOM HAGER</u>	✓		
<u>SENATOR HARRY MC LANE</u>	✓		
<u>SENATOR CECIL WEEDING</u>	✓		
<u>SENATOR JOHN "J.D." LYNCH</u>	✓		
<u>SENATOR GENE THAYER</u>	✓		

Each day attach to minutes.

Amendments to House Bill 734
Representative Thomas
March 10, 1989

1. Page 19, line 18 through 23.
Strike: page 19, line 21 through 23 in their entirety.
 2. Page 19, line 24.
Strike: "(3)"
 3. Page 19, line 24.
Following: "(2)"
Strike: "(3)"
Insert: "(2)"
 4. Page 29, line 8 through 13.
Strike: page 29, line 8 through 13 in their entirety.
 5. Page 29, line 14.
Following: "(2)"
Strike: "(3)"
Insert: "(2)"
 6. Page 29, line 18.
Following: "(2)"
Strike: "(4)"
Insert: "(3)"
 7. Page 30, line 10.
Following: "(4)"
Strike: "(5)"
Insert: "(4)"
 8. Page 30, line 13.
Following: "(2)"
Strike: "(6)"
Insert: "(5)"
 8. Page 32, line 10 through 15.
Strike: page 32, line 10 through 15 in their entirety.
 9. Page 32, line 16.
Following: "(2)"
Strike: "(3)"
Insert: "(2)"
 10. Page 32, line 20.
Following: "(2)"
Strike: "(4)"
Insert: "(3)"
 11. Page 33, line 12.
Following: "(4)"
Strike: "(5)"
Insert: "(4)"
 12. Page 33, line 15.
Following: "(2)"
Strike: "(6)"
Insert: "(5)"
- 25

House Bill 734
Insurance Single License Bill

Section by section analysis

Montana Insurance Department

The Single License Bill originated from the National Association of Insurance Commissioners' (NAIC) model act and suggested changes to the existing licensing section made by agents, agent associations and the Insurance Department.

Section 1 is a short form amendment which allows all references to "agent" or "solicitor" in the Insurance Code to be changed to "insurance producer".

Section 2 is a short form amendment changing "surplus lines agent" to "surplus lines producer".

Section 3 does the same as Sections 1 & 2 for "title insurance agents".

Section 4 is a new section adding back in a prohibition against holding a producer's license for the purpose of writing insurance only on one's own risks or the risks of one's employer. The controlled business prohibition previously in our agent's licensing laws was deleted last session. (It should not have been.)

Sections 5 through 11 are sections where a short form amendment was not sufficient; so changes have been made both to grammar and reflecting the general shift to "insurance producer".

Section 12 amends the fees section deleting a fee for appointment and solicitor. Where "insurance producers" were inserted both under resident and nonresident, a provision for annual renewal of license fees was added. This section also amends existing law to recognize the administration of licensing exams by private testing services, and the charging for those exams by the private firms.

Sections 13 through 14 are again general revisions reflecting the shift to "insurance producers" and grammatical changes. The first section was intended to recognize the producer licensing requirements apply to fraternal benefit societies. NOTE: We need to take a look at this change to see how it complies with 33-7-525 and 526, MCA.

Section 15 through 57 amend insurance licensing law, generally changing all references from "agent" and "solicitor" to "insurance producer". In addition other changes are made in these sections, so it is necessary to go through them item by item.

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Section 15 is amended to include a purpose for licensing. Current law only addresses the scope of licensing.

Section 16 amends definitions. All definitions contained in Chapter 17 have been moved to the beginning of the chapter, a housekeeping measure. "Public adjuster" is moved to put the phrase in alphabetical order. Definitions for "consultant" and "administrator" are moved to the beginning of the section as opposed to the individual parts dealing with those specialized licensees. (Note these two types of licensees, as well as adjusters, are not incorporated in the single producer license because they do not produce insurance business.) Definitions for "consultant license", "administrator license", "individual", "insurance producer", "license", "person" and "controlled business" have been added. Customer service representative is included under the definition of "insurance producer", (9)(c). NOTE: the last portion of the customer service representative was amended out in House Business executive session 2/17. Deleted language is found on page 25, lines 1&2 beginning with "but who is...".

Section 17 amends the exceptions and exemptions from definition section. This clarifies that individuals working purely in a clerical capacity need not be licensed; salaried employees incidentally taking application; a person forwarding information with respect to an existing group contract; an employer or his employees engaged in the administration of the employer's employee benefit plans; an employee of an insurer who inspects, classifies or rates risks or trains insurance producers, or customer service representatives.

Section 18 amends the general license requirement section, including a representative of a fraternal benefit society.

Section 19 amends the general qualifications and applications for licensure. The allowance for insurance producer organizations to be licensed and sell coverage to governmental entities is contained in this part. It was previously contained in 33-17-205, MCA, a section which will be repealed by this bill.

Section 20 amends the examination requirements. Recognition is given for a license applicant moving here from another state in which the individual was licensed. With a letter from the previous state, the individual would only be required to take the Montana specific portion of the licensing exam and any portion for a line of authority not held in the previous state. NOTE: a change in how exams will be given to individuals previously licensed in another state who left the other state in good standing.

Section 21 amends the conduct of exams requirement. Old section 2 has been deleted and is now included in revised 33-17-212 (6), MCA.

Section 22 amends the issuance and content of licenses. This section provides for the annual renewal of licenses, and lays out the renewal mechanism. NOTE: Procedures will need to be developed.

ex. #8
3/10/87

Section 23 amends temporary license authority.

Sections 24 and 25 contain grammatical changes and "insurance producer" only.

Section 26 amends the adjuster licensing section. It clarifies the annual renewal date.

Section 27 amends nonresident licensing section and includes a provision that, if the state of residence suspends, revokes, or terminates the license, Montana can do the same for the nonresident license. The argument behind this is a nonresident license is based on the resident license. If the resident license expires, the nonresident should not be allowed to continue. NOTE: important change with respect to nonresident regulation.

Sections 28 and 30 are grammatical and "insurance producer" language changes only.

Section 29 appoint the commissioner as agent to receive service of process for nonresident agents. Basic procedure is laid out for service.

Section 31 addresses nonresident tax payment, requiring that if income earned is subject to Montana tax law, the licensed nonresident agent shall file a return in compliance with Montana tax law. NOTE: This change was made to comply with the original intent of the business written in Montana law. A nonresident license could be suspended or revoked for failure to file a tax return on Montana business written which is subject to Montana income tax law. The problems with the old section were:

- 1) reporting requirements did not yield information which could be used by the Department of Revenue; and
- 2) no recognition was given to the fact that the tax laws only apply to income earned within the borders.

Section 32 reflects general grammatical changes and "insurance producer" language.

Sections 33 through 46 make grammatical changes to the consultant's and administrator's licensing law.

Section 47 amends the suspension, revocation or refusal of license section.

Section 48, procedures following suspension or revocation is amended to include the allowance for license refusal up to five years in the event of license revocation.

Sections 49 through 51 make changes in phraseology and "insurance producer".

Section 52 amends the reporting and accounting of premium section to clarify that misappropriation of funds is theft.

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Section 53 amends the exchange of business section removing the requirement that one individual hold an appointment, and clarify that both parties to an exchange need to be properly licensed. This section applies to insurance companies as well.

Section 54 limits controlled business. The old controlled business section was taken out in 1987 inadvertently.

The rest of the bill draft made grammatical changes in compliance with Montana bill drafting procedures and changed "agent" and "solicitor" to "insurance producer."

INS 509 (8-11)

DATE

March 10, 1989

COMMITTEE ON

Business & Industry

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Don Ingels	Mt. Chamber of Commerce	HB683	X	
MIKE PARKER	COT FALLS CAPITAL CORP	HB683	X	
Mike Parker	Mike Parker	HB683	X	
Eric Slaughter	GOLDEN DEV. CORP. BOZEMAN CHAMBER	HB683	X	
Wol Daly	Flathead Econ. Dev. Corp	HB683	X	
Don KLAFFAKE	Missoula Econ. Dev. Corp.	HB683	X	
Jim KEMBEL	BUSREGDUI DOC	HB258	X	
Pick Hill	PIATIAM	HB734	X	WMS Amendments
John Murphy	Montana Pioneer	HB683	X	
David Huntigton	MSTA	HB683	X	
Pat Melby	Mont. Ski Areas Ass'n	HB258	X	
Dane Leen	Board of Investment	HB683	X	
Greg McGowan	I.I.A. 11	HB-234	X	
Nancy Keenan	OFT	HB683	X	
Tim Whalen	H.D.93	H.B.734	X	
ARCI Willis		HB734		
Winnie Kimball		HB734	X	
Col Richard		HB734	X	
O'Neil		HB734		
Winnie Perkins		HB734		
Ed Oaro	St. Paul Co.	HB747		X
Pauline Farrell	Amer. Bus. Assoc.	HB247		X
James L. Lipp	Alliance of Am. Business	HB247		X

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By Chairman Gene Thayer, on March 13, 1989,
at 10:00 a.m., Room 410

ROLL CALL

Members Present: Chairman Thayer, Vice Chairman Meyer,
Senator Boylan, Senator Noble, Senator Williams,
Senator Hager, Senator McLane, Senator Lynch

Members Excused: None

Members Absent: Senator Weeding

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 669

Presentation and Opening Statement by Sponsor:

Representative Marian Hanson, House District 100, said HB 669 was the result of a federal law, and allowed for the creation of certain multiple employer health plans and their state regulation. She said the bill would help keep the cost of health insurance down, and would assist hospitals and other providers in rural areas. She presented an amendment for the bill. (See Exhibit #1) She also passed out a summary of HB 669. (See Exhibit #2)

List of Testifying Proponents and What Group They Represent:

Mike Young - CCA, Billings and Missoula, Montana
Senator Dorothy Eck - Senate District 40
Lloyd Lockrem, Jr. - Montana Contractors Association
Roger Tippy - Montana Dental Association
Don Ingels - Montana Chamber of Commerce
Gene Fenderson - Montana State Building Construction
Trades Council
Steve Brown - Blue Cross/Blue Shield
Carla Gray - Montana Car Company
Rob Morawic - Missoula Chamber of Commerce

said he agreed it was large, and they had been instructed to adopt the legislation as introduced, without any amendments. He said all attempts to amend the insurance title had been futile. He said he felt that if anyone was concerned about getting insurance rates down in Montana, this would be foremost in their efforts. He said he felt they would not have to fight coalitions for rate reduction if there was proper regulation. He said he hoped they would give HJR 5 serious consideration, and he thought it would actually help business in Montana.

DISPOSITION OF HOUSE JOINT RESOLUTION 5

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

DISPOSITION OF HOUSE BILL 734

Discussion: Chairman Thayer stated that Representative Thomas wished to present the amendment he was going to offer on HB 734, which they had heard previously.

Representative Thomas presented copies of Exhibit #10 for everyone to follow. He stated that the amendments he had offered during the hearing were for the purpose of stripping the House floor amendments, and he would want the committee to do that, no matter what they did with the bill. He stated the floor amendments attempted to place appointments back into the bill, but they weren't done in correct form. He said he wanted to take them all out and start over on that issue.

He said the second set of amendments (exhibit #10) was done by Mary McCue and Eddy McClure, at his request. He stated that these amendments put appointments back in the bill, in what they thought was correct form. He said the current appointment process was an ongoing one, with annual appointment to every agent in the state. He said that for every company that was under the umbrella of a certain company there was a separate appointment for that company, through that agent or agency and there was a \$10 fee charged. He said the amendments followed the same model language contained HB 734, and they would eliminate a bulk of the paperwork that was ongoing because these would make

the appointment perpetual.

He said one of the major carriers today had told him the appointment process was a prime part of why they were a major carrier. He said the appointment process provided consumer protection, and may even help the agent in some cases. He said he would like to see them strip the old amendments and put both sets of these amendments into HB 734.

Chairman Thayer stated that hearing testimony had indicated a concern about the language on page 83 of HB 734, regarding the change from a misdemeanor to a felony. He asked why the amendments didn't address that issue? Representative Thomas said he thought it would probably be fairest to strike the amendments, and keep the current law.

Chairman Thayer asked if the amendments had been concurred in? Representative Thomas said the agents and their associations were in favor of the amendments.

Jim Borchardt said that as far as he knew, the commissioner would object. He said she was still strongly of the opinion that the appointments should not be in.

Chairman Thayer asked how many FTEs would be eliminated if the appointment process was removed? Mr. Borchardt said he was not able to address the question.

Larry Akey said it was his understanding that the Auditor's Office currently had two full time equivalents allocated specifically for the purpose of handling the annual appointment process. He said the shift to perpetual appointments would clearly reduce their work load, but he could not speak for the office, as to the actual amount.

Representative Thomas said he would think that if the FTEs were freed up, he would certainly hope they would put to other functions within the office. He said other areas of the office, like the investigation area, were lacking in help.

Chairman Thayer asked if the committee agreed with the section dealing with the felony? He said they had opposed a like section in another piece of legislation, and he wanted to know how they felt.

Senator Lynch said he still felt the same way, and agreed that he would like it addressed in the amendments being prepared.

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Senator Meyer voiced agreement, as did Senator Noble.

Mary McCue said the bill needed three or four very minor clerical corrections throughout, and she said she had been instructed to ask the committee to include those amendments.

Chairman Thayer said the committee had held HB 536, pending the outcome of HB 734. He asked for a rebriefing as to how the two bills coordinated? Representative Thomas said HB 734 defined what a customer service representative was, and HB 536 would not require licensing of a customer service representative in the future, as was required presently. He said that by making the change in HB 734 to state that a customer service representative would not have to be licensed, then HB 536 could deal with the pre-education which must be completed before someone took the test.

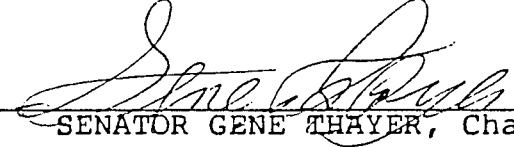
Chairman Thayer said Mary McCue would draft the amendments and the committee would take executive action on the bills as soon as time and preparations allowed.

Amendments and Votes: None

Recommendation and Vote: None

ADJOURNMENT

Adjournment At: 12:13 p.m.


SENATOR GENE THAYER, Chairman

GT/ct

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 3/13

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
<u>SENATOR DARRYL MEYER</u>	✓		
<u>SENATOR PAUL BOYLAN</u>	✓		
<u>SENATOR JERRY NOBLE</u>	✓		
<u>SENATOR BOB WILLIAMS</u>	✓		
<u>SENATOR TOM HAGER</u>	✓		
<u>SENATOR HARRY MC LANE</u>	✓		
<u>SENATOR CECIL WEEDING</u>		✓	
<u>SENATOR JOHN "J.D." LYNCH</u>	✓		
<u>SENATOR GENE THAYER</u>	✓		

Each day attach to minutes.

Amendments to House Bill No. 734
Third Reading Copy

For the Senate Committee on Business and Industry

Prepared by Eddy McClure
March 9, 1989

1. Title, line 20.

Following: "RESIDENCE;"

Insert: "PROVIDING FOR APPOINTMENT OF INSURANCE PRODUCERS;
PROVIDING FOR NOTIFICATION UPON TERMINATION OF AN APPOINTED
INSURANCE PRODUCER;"

2. Title, Page 2, lines 7 and 8.

Following: "33-17-403,"

Strike: "AND"

Following: "~~33-17-1104,~~"

Insert: "AND 33-17-1104,"

3. Page 5, line 5.

Following: line 4

Insert: "NEW SECTION. Section 5. Appointments of insurance
producers by insurers. (1) An insurance producer may not
claim to be a representative of or an authorized or
appointed insurance producer of or use another term implying
a contractual relationship with a particular insurer and may
not accept applications for the insurer unless the insurance
producer becomes an appointed insurance producer of that
insurer pursuant to this section. The following are the
appointing insurer's requirements for making appointment of
a licensed insurance producer:(a) The insurer shall, no later than 15 days from the
date the agency contract is executed or the first insurance
application is submitted by a licensed insurance
producer, whichever is earlier, file with the insurance
department a written notice of appointment on a form
prescribed by the insurance department.(b) If there is no executed agency contract, the
insurer shall mail to the licensed insurance producer, no
later than 15 days from the date the first insurance
application is submitted by him, a copy of the notice of
appointment form filed with the insurance department. If
the licensed insurance producer does not receive the
acknowledgement of appointment from the insurer within 30
days from the date the first insurance application is
submitted to the insurer, the insurance producer shall
immediately discontinue acting as an insurance producer on
behalf of that insurer until the acknowledgement is received
or the agency contract is executed.

(2) Upon receipt of the notice of appointment, the

insurance department shall verify within 5 working days that the licensed insurance producer is eligible for appointment. If the licensed insurance producer is determined to be ineligible for appointment, the insurance department shall notify the insurer within 5 days of the determination.

(3) An appointment is effective on the date of the executed contract and is perpetual until canceled by the insurer.

NEW SECTION. Section 6. Notification of appointment termination. (1) Upon the termination of an appointed insurance producer by an insurer, the insurer shall notify the insurance department within 30 days in the manner prescribed by the insurance department. If the reason of the termination is for any of the causes listed in [section 49 or 63], the insurer shall notify the insurance department of the reason and the insurer shall, upon request of the insurance department, provide information, documents, records, or other data pertaining to the termination that may be used by the insurance department in any action taken pursuant to [section 60].

(2) Any information, documents, records, or other data provided pursuant to this section is privileged and there is no liability on the part of nor may a cause of action of any nature arise against the insurance department, the insurance company, or an authorized representative of either so long as the privileged information is furnished in good faith."

Renumber: subsequent sections

4. Page 14, lines 13 through 15.

Following: "\$ ~~300.00~~"

Strike: "\$ 500.00"

Insert: "\$ 600.00"

5. Page 15, lines 8 through 21.

Strike: subsection (e) in its entirety

Renumber: subsequent subsections

6. Page 16, line 6.

Following: "~~100.00~~"

Strike: "50.00"

Insert: "40.00"

7. Page 19, lines 18 through 23.

Strike: subsection (2) in its entirety

Renumber: subsequent subsection

8. Page 29, lines 8 through 13.

Strike: subsection (2) in its entirety

Ex. #10
3/13/89
H/B 734

Renumber: subsequent subsections

9. Page 32, lines 10 through 15.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections

10. Page 77, lines 4 through 6.
Following: "~~33-17-1104~~"
Strike: remainder of line 4 through "33-17-1104" on line 6

11. Page 92, line 2.
Following: "33-17-403,"
Strike: "AND"
Following: "~~33-17-1104~~,"
Insert: "and 33-17-1104,"

12. Page 92, line 9.
Following: "4"
Insert: "through 6"
Following: "4]"
Strike: "is"
Insert: "are"

13. Page 92, line 11.
Following: "4"
Insert: "through 6"

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By Chairman Gene Thayer, on March 15, 1989,
at 10:00 a.m.

ROLL CALL

Members Present: Chairman Thayer, Vice Chairman Meyer,
Senator Boylan, Senator Noble, Senator Williams,
Senator Hager, Senator McLane, Senator Weeding,
Senator Lynch.

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative council

Announcements/Discussion: None

HEARING ON HOUSE BILL 406

Presentation and Opening Statement by Sponsor:

Representative Gould, House District, 61, said HB 406 would put a definition in the law, to define the brokering of automobiles. He said automobile dealers were dependant on automobile auctions, and the bill did not pertain to automobile dealer auctions.

List of Testifying Proponents and What Group They Represent:

Steve Turkiewicz - Executive Vice President, Montana
Auto Dealers Association
Tom Harrison - Montana Auto Dealers Association

List of Testifying Opponents and What Group They Represent:

None

Testimony: Steve Turkiewicz said HB 406 was a definition of broker. He said that if you looked in Title 61, regarding automobile sales and franchise auto sales, there was reference to broker several times throughout the law, but there was no definition. He said they thought the definition was necessary and required in state law, and they felt this would address the needs of all concerned.

DISPOSITION OF HOUSE BILL 662

Discussion: Chairman Thayer asked Mr. Lane of the Department of Fish Wildlife and Parks, to advise the committee of points they wished to make. Mr. Lane said the concern was whether the present statutory language generated a contractual obligation, on behalf of the state. He said the language could indicate that, but he felt people buying the \$1 sticker, would not generally expect to bind the state. (See Exhibit #5) He said he thought this should be looked at as a privilege extended, and the language basically delineated the extent of that privilege and the amount was merely an administrative fee. He stated it was very difficult for the State Legislature from one session, to bind that of another session. He said he did not feel the sticker was a contractual obligation.

Senator Williams asked if there was a letter which accompanied the sticker? Mr. Lane said the sticker was all anyone had received.

Senator Lynch said he felt there was a lesson to be learned, that shouldn't put in statute, words such as 'this pass is valid for the lifetime of the individual'.

Amendments and Votes: None

Recommendation and Vote: Senator Weeding made a motion HB 662 BE CONCURRED IN. Senator Noble seconded the motion. The motion Carried, with Senator Lynch, Senator Boylan, and Senator Meyer opposing. Senator Weeding carried the bill on the Senate floor.

DISPOSITION OF HOUSE BILL 734

Discussion: Chairman Thayer said they had been holding, HB 536, pending what they did with HB 734. Chairman Thayer stated the sponsor had asked the committee to strip the House amendments, and reinsert new amendments. Mary McCue said Exhibit #6 contained the technical amendments they had discussed. except for the one substantive one, which was striking section 58 in its entirety. She said that was the section which dealt with increasing the fine for false application. She said the amendments from the insurance commissioner's office, simply removed the House amendments. She stated Representative Thomas' amendments put back, the provisions for appointments. (See Exhibit #6)

Chairman Thayer asked Susan Witte of the Auditor's Office, the position of the Auditor on the amendments? Susan Witte said the Auditor did not like the appointments in there. She stated, the portion pertaining to false applications, should be referenced to 33-1-701 which is the hearings procedure for the Insurance Department.

Roger McGlenn said he agreed, that the Insurance Department would only handle the hearing portion, then the felony charges would be under the authority of another department.

Mary McCue asked if it would be more appropriate to refer to the whole part seven, the hearing process? Susan Witte said you probably could, but it may be better to just use the hearing section.

Roger McGlenn told Mary McCue he was comfortable with using the whole part.

Chairman Thayer stated this was the second or third bill where the Auditor had language moving from misdemeanors, to felonies. He said the committee had opposed the language on all occasions, because the language seemed so broad, as to encompass an innocent mistake. Would you like to comment on that language, and tell us what is wrong with the current mechanism for dealing with violators? Susan Witte said she didn't think there was anything in the criminal code that would make violations, of the unfair trade practices chapter, a felony. She said a prosecutor would look to the insurance code for the penalty, and if they looked at it now, they would prosecute it for a misdemeanor. She said they had seen some pretty unfair claims, and all they could do was revoke the license, or fine that person. She said the County Attorney had to deal with any misdemeanor or felony, and it did not give them any more authority.

Larry Akey told Chairman Thayer that Ms. Witte was correct. It did not expand the powers of the Commissioner's Office, but it did expand the penalty from a misdemeanor to a felony. He said they did support the provision in the bill, which gave the Commissioner's Office the ability to revoke a license, of any individual violating provisions of the code, for up to five years. He said they felt that removing someone's livelihood for up to five years, was more than an adequate penalty.

Mary McCue asked where the causes were in bill, as described, in the new section 6, where it said 'the causes listed in section 49 or 63? Larry Akey said they were sections 47 and 61 in the new bill.

Chairman Thayer asked if he was right in summarizing, by saying that if they adopted the McCue technical amendments, and if they adopt the McClure amendments Representative Thomas proposed, with this technical change being discussed now, this bill would then meet the approval of everyone; including the Auditor, with the exception of the language that dealt with the appointment process?

Susan Witte said he was correct, the Auditor did not like the appointment language at all.

Chairman Thayer said that it came from the House with that language, and even though the Auditor wanted that language struck, the House would not accept that. He said he felt this language probably made it better, and the House may accept it. He stated there had been a lot of conflicting testimony, as to the need for the appointment language, and his opinion was that the language was necessary. He said the new language did allow the process to work more smoothly.

Amendments and Votes: Senator Meyer moved to adopt the amendments in exhibit #6. Senator McLane seconded the motion. The motion Carried Unanimously.

Discussion: Mary McCue said on page 2, in the new section 6, correcting the internal references, they will now be 'if the reason for the for the termination is for any of the causes listed in section 49 or 62, because we are removing section 58. She said at the end of that sentence, where it referred to section 60, we are going to insert 'title 33, chapter 1, part 7.

Amendments and Votes: Senator Noble moved to adopt the amendments in exhibit #7. Senator Meyer seconded the motion. The motion Carried Unanimously.

Recommendation and Vote: Senator McLane made a motion HB 734 BE CONCURRED IN AS AMENDED. Senator Williams seconded the motion. The motion Carried Unanimously. Senator Williams carried the bill on the Senate floor.

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 3/15/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
<u>SENATOR DARRYL MEYER</u>	✓		
<u>SENATOR PAUL BOYLAN</u>	✓		
<u>SENATOR JERRY NOBLE</u>	✓		
<u>SENATOR BOB WILLIAMS</u>	✓		
<u>SENATOR TOM HAGER</u>	✓		
<u>SENATOR HARRY MC LANE</u>	✓		
<u>SENATOR CECIL WEEDING</u>	✓		
<u>SENATOR JOHN "J.D." LYNCH</u>	✓		
<u>SENATOR GENE THAYER</u>	✓		

Each day attach to minutes.

Amendments to House Bill No. 734
Third Reading Copy
For the Committee on Business and Industry
Prepared by Mary McCue
March 14, 1989

1. Title, line 22.
Strike: "33-14-301,"
2. Title, Page 2, line 4.
Strike: "33-18-401,"
3. Page 3, line 1.
Strike: "33-17-204 through"
4. Page 3, line 2.
Strike: "33-17-218," and "33-17-403,"
5. Page 3, line 3.
Strike: "33-17-601,"
6. Page 25, line 5.
Strike: "or"
Insert: "of"
7. Page 28, line 15.
Strike: "(5)"
Insert: "(6)"
8. Page 30, line 24.
Strike: "that"
Insert: "the"
9. Page 34, line 1.
Strike: "that"
Insert: "the"
10. Page 45, line 14.
Following: "contents"
Insert: "-- lapse of license -- change of address"
11. Page 69, line 4.
Following: "any"
Insert: "other"
12. Page 69, line 22.
Strike: "in"
13. Page 77, line 4.
Strike: "AS"
14. Page 82, line 19 through page 83, line 15.
Strike: section 58 in its entirety
Re-number: subsequent sections

Amendments to House Bill No. 734
Third Reading Copy

For the Senate Committee on Business and Industry

Prepared by Eddy McClure
March 9, 1989

1. Title, line 20.

Following: "RESIDENCE;"

Insert: "PROVIDING FOR APPOINTMENT OF INSURANCE PRODUCERS;
PROVIDING FOR NOTIFICATION UPON TERMINATION OF AN APPOINTED
INSURANCE PRODUCER;"

2. Title, Page 2, lines 7 and 8.

Following: "33-17-403,"

Strike: "AND"

Following: "~~33-17-1104,~~"

Insert: "AND 33-17-1104,"

3. Page 5, line 5.

Following: line 4

Insert: "NEW SECTION. Section 5. Appointments of insurance
producers by insurers. (1) An insurance producer may not
claim to be a representative of or an authorized or
appointed insurance producer of or use another term implying
a contractual relationship with a particular insurer and may
not accept applications for the insurer unless the insurance
producer becomes an appointed insurance producer of that
insurer pursuant to this section. The following are the
appointing insurer's requirements for making appointment of
a licensed insurance producer:(a) The insurer shall, no later than 15 days from the
date the agency contract is executed or the first insurance
application is submitted by a licensed insurance
producer, whichever is earlier, file with the insurance
department a written notice of appointment on a form
prescribed by the insurance department.(b) If there is no executed agency contract, the
insurer shall mail to the licensed insurance producer, no
later than 15 days from the date the first insurance
application is submitted by him, a copy of the notice of
appointment form filed with the insurance department. If
the licensed insurance producer does not receive the
acknowledgement of appointment from the insurer within 30
days from the date the first insurance application is
submitted to the insurer, the insurance producer shall
immediately discontinue acting as an insurance producer on
behalf of that insurer until the acknowledgement is received
or the agency contract is executed.

(2) Upon receipt of the notice of appointment, the

EX. #7
3/15/89

insurance department shall verify within 5 working days that the licensed insurance producer is eligible for appointment. If the licensed insurance producer is determined to be ineligible for appointment, the insurance department shall notify the insurer within 5 days of the determination.

(3) An appointment is effective on the date of the executed contract and is perpetual until canceled by the insurer.

NEW SECTION. Section 6. Notification of appointment termination. (1) Upon the termination of an appointed insurance producer by an insurer, the insurer shall notify the insurance department within 30 days in the manner prescribed by the insurance department. If the reason of the termination is for any of the causes listed in [section 49 or 63], the insurer shall notify the insurance department of the reason and the insurer shall, upon request of the insurance department, provide information, documents, records, or other data pertaining to the termination that may be used by the insurance department in any action taken pursuant to [section 60].

(2) Any information, documents, records, or other data provided pursuant to this section is privileged and there is no liability on the part of nor may a cause of action of any nature arise against the insurance department, the insurance company, or an authorized representative of either so long as the privileged information is furnished in good faith."

Renumber: subsequent sections

4. Page 14, lines 13 through 15.

Following: "~~\$ 300.00~~"

Strike: "\$ 500.00"

Insert: "\$ 600.00"

5. Page 15, lines 8 through 21.

Strike: subsection (e) in its entirety

Renumber: subsequent subsections

6. Page 16, line 6.

Following: "~~100.00~~"

Strike: "50.00"

Insert: "40.00"

7. Page 19, lines 18 through 23.

Strike: subsection (2) in its entirety

Renumber: subsequent subsection

8. Page 29, lines 8 through 13.

Strike: subsection (2) in its entirety

3/15/89

Renumber: subsequent subsections

9. Page 32, lines 10 through 15.
Strike: subsection (2) in its entirety
Renumber: subsequent subsections

10. Page 77, lines 4 through 6.
Following: "~~33-17-1104~~"
Strike: remainder of line 4 through "33-17-1104" on line 6

11. Page 92, line 2.
Following: "33-17-403,"
Strike: "AND"
Following: "~~33-17-1104~~,"
Insert: "and 33-17-1104,"

12. Page 92, line 9.
Following: "4"
Insert: "through 6"
Following: "4]"
Strike: "is"
Insert: "are"

13. Page 92, line 11.
Following: "4"
Insert: "through 6"

SENATE STANDING COMMITTEE REPORT

page 1 of 4
March 15, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 734 (third reading copy -- blue), respectfully report that HB 734 be amended and as so amended be concurred in:

Sponsor: Thomas (Williams)

1. Title, line 20.
Following: "RESIDENCE;"
Insert: "PROVIDING FOR APPOINTMENT OF INSURANCE PRODUCERS;
PROVIDING FOR NOTIFICATION UPON TERMINATION OF AN APPOINTED
INSURANCE PRODUCER;"

2. Title, line 22.
Strike: "33-14-301,"

3. Title, Page 2, line 4.
Strike: "33-18-401,"

4. Title, Page 2, lines 7 and 8.
Following: "33-17-403," on line 7
Strike: "AND"
Following: "~~33-17-1104~~," on line 8
Insert: "AND 33-17-1104,"

5. Page 3, line 1.
Strike: "33-17-204 through"

6. Page 3, line 2.
Strike: "33-17-218," and "33-17-403,"

7. Page 3, line 3.
Strike: "33-17-601,"

8. Page 5, line 5.
Following: line 4
Insert: "NEW SECTION. Section 5. Appointments of insurance producers by insurers. (1) An insurance producer may not claim to be a representative of or an authorized or appointed insurance producer or use another term implying a contractual relationship with a particular insurer and may not accept applications for the insurer unless the insurance producer becomes an appointed insurance producer of that insurer pursuant to this section. The following are the appointing insurer's requirements for making appointment of a licensed insurance producer:

SENATE COMMITTEE ON BUSINESS AND INDUSTRY, HB 734
page 2 of 4

(a) The insurer shall, no later than 15 days from the date the agency contract is executed or the first insurance application is submitted by a licensed insurance producer, whichever is earlier, file with the insurance department a written notice of appointment on a form prescribed by the insurance department.

(b) If there is no executed agency contract, the insurer shall mail to the licensed insurance producer, no later than 15 days from the date the first insurance application is submitted by him, a copy of the notice of appointment form filed with the insurance department. If the licensed insurance producer does not receive the acknowledgement of appointment from the insurer within 30 days from the date the first insurance application is submitted to the insurer, the insurance producer shall immediately discontinue acting as an insurance producer on behalf of that insurer until the acknowledgement is received or the agency contract is executed.

(2) Upon receipt of the notice of appointment, the insurance department shall verify within 5 working days that the licensed insurance producer is eligible for appointment. If the licensed insurance producer is determined to be ineligible for appointment, the insurance department shall notify the insurer within 5 days of the determination.

(3) An appointment is effective on the date of the executed contract and is perpetual until canceled by the insurer.

NEW SECTION. Section 6. Notification of appointment termination. (1) Upon the termination of an appointed insurance producer by an insurer, the insurer shall notify the insurance department within 30 days in the manner prescribed by the insurance department. If the reason of the termination is for any of the causes listed in [section 49 or 62], the insurer shall notify the insurance department of the reason and the insurer shall, upon request of the insurance department, provide information, documents, records, or other data pertaining to the termination that may be used by the insurance department in any action taken pursuant to Title 33, chapter 1, part 7.

(2) Any information, documents, records, or other data provided pursuant to this section is privileged and there is no liability on the part of nor may a cause of action of any nature arise against the insurance department, the insurance company, or an authorized representative of either so long as the privileged information is furnished in good faith."

Renumber: subsequent sections

9. Page 14, lines 13.

Strike: "\$ 500.00"

Insert: "\$ 600.00"

10. Page 14, lines 14 and 16.

Strike: "500.00"

Insert: "600.00"

11. Page 15, lines 8 through 21.

Strike: subsection (e) in its entirety

Renumber: subsequent subsections

12. Page 16, line 6.

Following: "100.00"

Strike: "50.00"

Insert: "40.00"

13. Page 19, lines 18 through 23.

Strike: subsection (2) in its entirety

Renumber: subsequent subsection

14. Page 25, line 5.

Strike: "or"

Insert: "of"

15. Page 29, lines 8 through 13.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

16. Page 30, line 24.

Strike: "that"

Insert: "the"

17. Page 32, lines 10 through 15.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

18. Page 34, line 1.

Strike: "that"

Insert: "the"

19. Page 45, line 14.

Following: "contents"

Insert: "-- lapse of license -- change of address"

20. Page 69, line 4.

Following: "any"

Insert: "other"

21. Page 69, line 22.

Strike: "in"

22. Page 77, lines 4 through 6.

Following: "33-17-1104"

Strike: remainder of line 4 through "33-17-1104" on line 6

23. Page 82, line 19 through page 83, line 15.

Strike: section 58 in its entirety

Renumber: subsequent sections

24. Page 92, line 2.

Following: "33-17-403,"

Strike: "AND"

Following: "33-17-1104,"

Insert: "and 33-17-1104,"

25. Page 92, line 9.

Strike: "Section"

Insert: "Sections"

Following: "4"

Insert: "through 6"

Following: "4]"

Strike: "is"

Insert: "are"

26. Page 92, line 11.

Strike: "section"

Insert: "sections"

Following: "4"

Insert: "through 6"

AND AS AMENDED BE CONCURRED IN

Signed, 

Gene Thayer, Chairman

Page 1 of 2

Mr. Speaker:

We, the Conference Committee on House Bill 734 met and considered: House Bill 734 (third reading -- blue copy) and the amendments to House Bill 734 adopted by the Senate (pink sheet).

We recommend that House Bill 734 (reference copy -- salmon) be amended as follows:

1. Title, page 2, line 6.

Following: "~~33-18-401,~~"

Insert: "33-18-401,"

2. Page 18.

Following: line 4

Insert: "(e) insurance producer's license:

- (i) application for original license, including issuance of license, if issued.....15.00
- (ii) appointment of insurance producer, each insurer.10.00
- (iii) temporary license.....15.00
- (iv) amendment of license (excluding additions to license) or reissuance of master license.....15.00"

Renumber: subsequent subsections

3. Page 18.

Following: line 13

Insert: "appointment of insurance producer, each insurer..10.00"

4. Page 18, line 14.

Following: "~~(iv)~~"

Insert: "(iii)"

Renumber: subsequent subsection

5. Page 18, line 15.

Strike: "40.00"

Insert: "10.00"

6. Page 86.

Following: line 1

Insert: "Section 60. Section 33-18-401, MCA, is amended to read:

"33-18-401. False ~~applications, claims~~ application, claim, and ~~proofs~~ proof of loss -- criminal penalty. ~~Any solicitor, agent~~ (1) An insurance producer, examining physician, applicant, or other person who knowingly or willfully makes ~~any~~ a false or

or other person who knowingly or willfully makes ~~any~~ a false or fraudulent statement or representation in or with reference to ~~any~~ an application for insurance ~~or, for the purpose of obtaining any money or benefit, knowingly or willfully presents or causes to be presented a false or fraudulent claim or any proof in support of such a claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim,~~ shall be is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$250 or more than \$1,000 or by imprisonment in the county jail for not less than 3 months or more than 6 months or both such fine and imprisonment at the discretion of the court.

(2) An insurance producer, examining physician, applicant, or other person who, for the purpose of obtaining any money or benefit, knowingly or willfully presents or causes to be presented a false or fraudulent claim or any proof in support of such a claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against him."

Renumber: subsequent sections

And that this Conference Committee Report be adopted.

For the House:

Rep. Dorothy Cody
Rep. Dorothy Cody, Chairman

Rep. Stella Jean Hansen
Rep. Stella Jean Hansen

Fred Thomas
Rep. Fred Thomas

For the Senate:

Sen. Gene Thayer
Sen. Gene Thayer, Chairman

Sen. Jerry Noble
Sen. Jerry Noble

Sen. Bob Williams
Sen. Bob Williams

Page 1 of 2

Mr. Speaker:

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We recommend that House Bill 734 (reference copy -- salmon) be amended as follows:

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Following: "~~33-18-401,~~"

Insert: "33-18-401,"

2. Page 18.

Following: line 4

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(i) application for original license, including issuance of license, if issued.....15.00
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(iii) temporary license.....15.00
(iv) amendment of license (excluding additions to license) or reissuance of master license.....15.00"

Renumber: subsequent subsections

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Following: line 13

Insert: "appointment of insurance producer, each insurer..10.00"

4. Page 18, line 14.

Following: "~~(iv)~~"

Insert: "(iii)"

Renumber: subsequent subsection

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Strike: "40.00"

Insert: "10.00"

6. Page 86.

Following: line 1

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"33-18-401. False ~~applications, claims application, claim,~~ and ~~proofs~~ proof of loss -- criminal penalty. ~~Any solicitor, agent~~ (1) An insurance producer, examining physician, applicant,

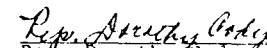
or other person who knowingly or willfully makes ~~any~~ a false or fraudulent statement or representation in or with reference to ~~any~~ an application for insurance ~~or, for the purpose of obtaining any money or benefit, knowingly or willfully presents or causes to be presented a false or fraudulent claim or any proof in support of such a claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, shall be~~ is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$250 or more than \$1,000 or by imprisonment in the county jail for not less than 3 months or more than 6 months or both such fine and imprisonment at the discretion of the court.

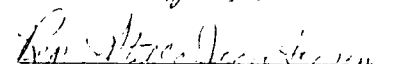
(2) An insurance producer, examining physician, applicant, or other person who, for the purpose of obtaining any money or benefit, knowingly or willfully presents or causes to be presented a false or fraudulent claim or any proof in support of such a claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against him."

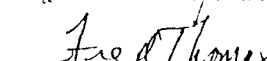
Renumber: subsequent sections

And that this Conference Committee Report be adopted.

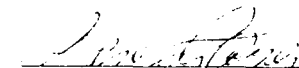
For the House:

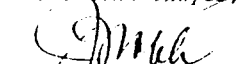

Rep. Dorothy Cody, Chairman

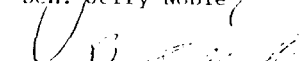

Rep. Stella Jean Hansen


Rep. Fred Thomas

For the Senate:


Sen. Gene Thayer, Chairman


Sen. Jerry Noble


Sen. Bob Williams

155

1 HOUSE BILL NO. 734
 2 INTRODUCED BY THOMAS, J. BROWN, WILLIAMS, THAYER
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 INSURANCE AGENT LICENSING LAWS; DIRECTING THE CODE
 6 COMMISSIONER TO CHANGE ANY REFERENCE TO THE TERM "ENROLLMENT
 7 REPRESENTATIVE", "INSURANCE AGENT", OR "AGENT" TO "INSURANCE
 8 PRODUCER", TO CHANGE ANY REFERENCE TO THE TERM "SURPLUS
 9 LINES AGENT" OR "SURPLUS LINES INSURANCE AGENT" TO "SURPLUS
 10 LINES INSURANCE PRODUCER", AND TO CHANGE ANY REFERENCE TO
 11 THE TERM "TITLE AGENT" OR "TITLE INSURANCE AGENT" TO "TITLE
 12 INSURANCE PRODUCER" WHEREVER IT APPEARS IN THE MONTANA CODE
 13 ANNOTATED; PROHIBITING THE GRANT OR EXTENSION OF A
 14 CONTROLLED BUSINESS LICENSE; PROVIDING THAT MISAPPROPRIATION
 15 OF INSURANCE PREMIUMS OR RETURN PREMIUMS CONSTITUTES THEFT;
 16 ALLOWING THE COMMISSIONER TO REVOKE AN INSURANCE PRODUCER
 17 LICENSE FOR UP TO 5 YEARS; ALLOWING FOR THE AUTOMATIC
 18 SUSPENSION, REVOCATION, OR TERMINATION OF A NONRESIDENT
 19 INSURANCE PRODUCER LICENSE UPON SUSPENSION, REVOCATION, OR
 20 TERMINATION IN HIS STATE OF RESIDENCE; PROVIDING FOR
 21 APPOINTMENT OF INSURANCE PRODUCERS; PROVIDING FOR
 22 NOTIFICATION UPON TERMINATION OF AN APPOINTED INSURANCE
 23 PRODUCER; AMENDING SECTIONS 33-1-402, 33-1-711, 33-2-303,
 24 33-2-308, 33-2-309, 33-2-316, 33-2-317, 33-2-708, 33-7-101,
 25 33-8-213, ~~33-14-301~~, 33-17-101 THROUGH 33-17-103, 33-17-201,

1 33-17-211 THROUGH 33-17-214, 33-17-216, 33-17-217,
 2 33-17-221, 33-17-301, 33-17-401, 33-17-404 THROUGH
 3 33-17-407, 33-17-411, 33-17-502 THROUGH 33-17-507, 33-17-511
 4 THROUGH 33-17-513, 33-17-602 THROUGH 33-17-604, 33-17-611,
 5 33-17-613, 33-17-1001 THROUGH 33-17-1004, 33-17-1101 THROUGH
 6 33-17-1103, 33-17-1111 THROUGH 33-17-1114, ~~33-18-401~~,
 7 33-18-401, 33-22-1703, 33-25-202, 33-25-214, 33-25-301,
 8 33-25-302, 33-25-401, AND 33-25-403, MCA; REPEALING SECTIONS
 9 33-17-202, 33-17-204, 33-17-205, 33-17-218, ~~33-17-231~~,
 10 ~~33-17-232~~, 33-17-402, 33-17-403, AND 33-17-601, AND
 11 ~~33-17-1104~~, AND 33-17-1104, MCA; AND PROVIDING A DELAYED
 12 EFFECTIVE DATE."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 NEW SECTION. Section 1. Name change -- short form
 16 amendment. Wherever it appears in 33-1-317, 33-1-403,
 17 33-1-711, 33-2-104, 33-2-120, 33-2-121, 33-2-302, 33-2-310,
 18 33-2-313, 33-2-315, 33-2-321, 33-2-701, 33-2-707, 33-2-709,
 19 33-2-723, 33-2-829, 33-2-1102, 33-2-1118, 33-2-1120,
 20 33-2-1306, 33-2-1310, 33-2-1322, 33-2-1331, 33-2-1333,
 21 33-2-1345 through 33-2-1347, 33-2-1353, 33-2-1362,
 22 33-2-1381, 33-3-206, 33-3-217, 33-4-103, 33-4-312, 33-4-511,
 23 33-5-104, 33-6-402, 33-6-403, 33-7-111, 33-7-519, 33-7-525,
 24 33-7-526, 33-8-118, 33-8-122, 33-8-204, 33-8-205, 33-8-211,
 25 33-8-221, 33-8-225 through 33-8-228, 33-10-106, 33-10-110,

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1 33-10-113, 33-10-207, 33-10-216, 33-11-104, 33-11-108,
 2 33-11-109, 33-11-123, 33-14-102, 33-14-201, 33-14-301,
 3 33-14-304, 33-14-307, 33-15-302, 33-15-1101, 33-15-1105,
 4 33-16-106, 33-16-1011, ~~33-17-204~~---through 33-17-206,
 5 ~~33-17-210~~, 33-17-231, 33-17-232, 33-17-401, ~~33-17-403~~,
 6 ~~33-17-601~~, 33-18-205, 33-18-210 through 33-18-213,
 7 33-18-305, 33-18-501, 33-19-102 through 33-19-104, 33-19-201
 8 through 33-19-205, 33-19-301 through 33-19-306, 33-19-401,
 9 33-19-402, 33-19-404, 33-19-407 through 33-19-409,
 10 33-20-142, 33-20-212, 33-20-502, 33-20-1102, 33-22-122,
 11 33-22-204, 33-22-207, 33-22-208, 33-22-804, 33-22-805,
 12 33-22-813, 33-22-1515, 33-23-214 through 33-23-216,
 13 33-25-105, 33-25-106, 33-25-201, 33-25-202, 33-25-213,
 14 33-25-215, 33-25-216, 33-30-103, 33-30-105, 33-30-202,
 15 33-30-204, 33-30-305, 33-31-111 through 33-30-313, 33-31-102,
 16 33-31-211, 33-31-311, 33-31-401 or in law enacted by the
 17 51st legislature, the code commissioner is directed to
 18 change the term "enrollment representative", "enrollment
 19 representative's", "enrollment representatives", "enrollment
 20 representatives'", "insurance agent", "insurance agent's",
 21 "insurance agents", "insurance agents'", "agent", "agent's",
 22 "agents", or "agents'" to "insurance producer", "insurance
 23 producer's", "insurance producers", or "insurance
 24 producers'".

25 NEW SECTION. **Section 2.** Name change -- short form

1 amendment. Wherever it appears in 33-1-711, 33-2-301 through
 2 33-2-303, 33-2-305 through 33-2-313, 33-2-321, 33-2-326,
 3 33-2-502, 33-2-706, 33-2-709, 33-8-225, 33-17-1104,
 4 33-18-212 or in law enacted by the 51st legislature, the
 5 code commissioner is directed to change the term "surplus
 6 lines agent", "surplus lines agent's", "surplus lines
 7 agents", "surplus lines agents'", "surplus lines insurance
 8 agent", "surplus lines insurance agent's", "surplus lines
 9 insurance agents", or "surplus lines insurance agents'" to
 10 "surplus lines insurance producer", "surplus lines insurance
 11 producer's", "surplus lines insurance producers", or
 12 "surplus lines insurance producers'".

13 NEW SECTION. **Section 3.** Name change -- short form
 14 amendment. Wherever it appears in 33-2-851, 33-25-105,
 15 33-25-106, 33-25-201, 33-25-213, 33-25-216, 33-30-103 or in
 16 law enacted by the 51st legislature, the code commissioner
 17 is directed to change the term "title agent", "title
 18 agent's", "title agents", "title agents'", "title insurance
 19 agent", "title insurance agent's", "title insurance agents",
 20 or "title insurance agents'" to "title insurance producer",
 21 "title insurance producer's", "title insurance producers",
 22 or "title insurance producers'".

23 NEW SECTION. **Section 4.** Controlled business. (1) The
 24 commissioner may not grant or extend a license to a person
 25 if the license is being or will be used to write controlled

1 business.

2 (2) The commissioner shall consider a license to have
3 been, or intended to be, used for the purpose of writing
4 controlled business if, during any 12-month period, the
5 aggregate amount of premiums on controlled business would
6 exceed the aggregate amount of premiums on all other
7 insurance business of the applicant or licensee.

8 NEW SECTION. SECTION 5. APPOINTMENTS OF INSURANCE
9 PRODUCERS BY INSURERS. (1) AN INSURANCE PRODUCER MAY NOT
10 CLAIM TO BE A REPRESENTATIVE OF OR AN AUTHORIZED OR
11 APPOINTED INSURANCE PRODUCER OF OR USE ANOTHER TERM IMPLYING
12 A CONTRACTUAL RELATIONSHIP WITH A PARTICULAR INSURER AND MAY
13 NOT ACCEPT APPLICATIONS FOR THE INSURER UNLESS THE INSURANCE
14 PRODUCER BECOMES AN APPOINTED INSURANCE PRODUCER OF THAT
15 INSURER PURSUANT TO THIS SECTION. THE FOLLOWING ARE THE
16 APPOINTING INSURER'S REQUIREMENTS FOR MAKING APPOINTMENT OF
17 A LICENSED INSURANCE PRODUCER:

18 (A) THE INSURER SHALL, NO LATER THAN 15 DAYS FROM THE
19 DATE THE AGENCY CONTRACT IS EXECUTED OR THE FIRST INSURANCE
20 APPLICATION IS SUBMITTED BY A LICENSED INSURANCE PRODUCER,
21 WHICHEVER IS EARLIER, FILE WITH THE INSURANCE DEPARTMENT A
22 WRITTEN NOTICE OF APPOINTMENT ON A FORM PRESCRIBED BY THE
23 INSURANCE DEPARTMENT.

24 (B) IF THERE IS NO EXECUTED AGENCY CONTRACT, THE
25 INSURER SHALL MAIL TO THE LICENSED INSURANCE PRODUCER, NO

1 LATER THAN 15 DAYS FROM THE DATE THE FIRST INSURANCE
2 APPLICATION IS SUBMITTED BY HIM, A COPY OF THE NOTICE OF
3 APPOINTMENT FORM FILED WITH THE INSURANCE DEPARTMENT. IF THE
4 LICENSED INSURANCE PRODUCER DOES NOT RECEIVE THE
5 ACKNOWLEDGEMENT OF APPOINTMENT FROM THE INSURER WITHIN 30
6 DAYS FROM THE DATE THE FIRST INSURANCE APPLICATION IS
7 SUBMITTED TO THE INSURER, THE INSURANCE PRODUCER SHALL
8 IMMEDIATELY DISCONTINUE ACTING AS AN INSURANCE PRODUCER ON
9 BEHALF OF THAT INSURER UNTIL THE ACKNOWLEDGEMENT IS RECEIVED
10 OR THE AGENCY CONTRACT IS EXECUTED.

11 (2) UPON RECEIPT OF THE NOTICE OF APPOINTMENT, THE
12 INSURANCE DEPARTMENT SHALL VERIFY WITHIN 5 WORKING DAYS THAT
13 THE LICENSED INSURANCE PRODUCER IS ELIGIBLE FOR APPOINTMENT.
14 IF THE LICENSED INSURANCE PRODUCER IS DETERMINED TO BE
15 INELIGIBLE FOR APPOINTMENT, THE INSURANCE DEPARTMENT SHALL
16 NOTIFY THE INSURER WITHIN 5 DAYS OF THE DETERMINATION.

17 (3) AN APPOINTMENT IS EFFECTIVE ON THE DATE OF THE
18 EXECUTED CONTRACT AND IS PERPETUAL UNTIL CANCELED BY THE
19 INSURER.

20 NEW SECTION. SECTION 6. NOTIFICATION OF APPOINTMENT
21 TERMINATION. (1) UPON THE TERMINATION OF AN APPOINTED
22 INSURANCE PRODUCER BY AN INSURER, THE INSURER SHALL NOTIFY
23 THE INSURANCE DEPARTMENT WITHIN 30 DAYS IN THE MANNER
24 PRESCRIBED BY THE INSURANCE DEPARTMENT. IF THE REASON OF THE
25 TERMINATION IS FOR ANY OF THE CAUSES LISTED IN [SECTION 49

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OR 62], THE INSURER SHALL NOTIFY THE INSURANCE DEPARTMENT OF THE REASON AND THE INSURER SHALL, UPON REQUEST OF THE INSURANCE DEPARTMENT, PROVIDE INFORMATION, DOCUMENTS, RECORDS, OR OTHER DATA PERTAINING TO THE TERMINATION THAT MAY BE USED BY THE INSURANCE DEPARTMENT IN ANY ACTION TAKEN PURSUANT TO TITLE 33, CHAPTER 1, PART 7.

(2) ANY INFORMATION, DOCUMENTS, RECORDS, OR OTHER DATA PROVIDED PURSUANT TO THIS SECTION IS PRIVILEGED AND THERE IS NO LIABILITY ON THE PART OF NOR MAY A CAUSE OF ACTION OF ANY NATURE ARISE AGAINST THE INSURANCE DEPARTMENT, THE INSURANCE COMPANY, OR AN AUTHORIZED REPRESENTATIVE OF EITHER SO LONG AS THE PRIVILEGED INFORMATION IS FURNISHED IN GOOD FAITH.

Section 7. Section 33-1-402, MCA, is amended to read:

"33-1-402. Examination of agents insurance producers, managers, and promoters. For the purpose of ascertaining compliance with this code, the commissioner may, as often as he deems considers advisable, examine the accounts, records, documents, and transactions pertaining to or affecting its insurance affairs or proposed insurance affairs of:

(1) any an insurance agent producer, solicitor, surplus lines agent insurance producer, general agent insurance producer, or adjuster;

(2) any a person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control an insurer;

(3) any a person holding the shares of voting stock or policyholder proxies of a domestic insurer, for the purpose of controlling the management thereof of the domestic insurer, as voting trustee or otherwise;

(4) any a person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer or insurance holding corporation or corporation to finance a domestic insurer or the production of its business."

Section 8. Section 33-1-711, MCA, is amended to read:

"33-1-711. Appeals from the commissioner. (1) An appeal from the commissioner shall may be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused a hearing. Any person who was a party to such the hearing or whose pecuniary interests are directly and immediately affected by any such order or refusal and who is aggrieved thereby by an order or refusal may, within 30 days after the order has been mailed or delivered to the persons entitled to receive the same, the commissioner's order denying rehearing or reargument has been so mailed or delivered, or the commissioner's refusal to grant a hearing, appeal from such the order on hearing or such the refusal of a hearing. Any request for a stay of the commissioner's order must be made within 60 days, to run concurrently with the 30 days for appeal. The appeal shall

1 must be taken to the district court of Lewis and Clark
 2 County by filing written notice of appeal in such the court
 3 and by filing a copy of such the notice with the
 4 commissioner, except that in appeals from the suspension or
 5 revocation of the certificate of authority of a domestic
 6 insurer or of the license of an ~~agent, solicitor,~~ insurance
 7 producer or surplus lines ~~agent~~ insurance producer, the
 8 person taking the appeal may at his option, in lieu of the
 9 district court of Lewis and Clark County, take the appeal to
 10 the district court of the county of Montana in which the
 11 insurer has its principal place of business or the licensee
 12 resides.

13 (2) Upon filing of the notice of appeal ~~therein~~, the
 14 court ~~shall--have~~ has full jurisdiction and shall determine
 15 whether such the filing ~~shall--operate~~ operates as a stay of
 16 the order or action appealed from.

17 (3) Within 20 days after filing of the copy of the
 18 notice of appeal in his office, the commissioner shall make
 19 and return to the court in which the appeal is pending a
 20 copy of his order appealed from and a full and complete
 21 transcript, duly certified by the commissioner, of his
 22 record of the hearing upon which the order was issued,
 23 together with all exhibits and documentary evidence
 24 introduced ~~thereat~~ at the hearing. If the appeal is from an
 25 action of the commissioner with respect to which a hearing

1 was refused, the commissioner shall, within such the 20-day
 2 period, make and return to the court a full and complete
 3 transcript, duly certified by him, of all documents on file
 4 in his office directly relating to the matter as to which
 5 such the appeal is taken.

6 (4) Upon receipt of such the transcripts and evidence,
 7 the court shall hear the matter de novo as soon as
 8 reasonably possible thereafter. Upon the hearing of the
 9 appeal, the court shall consider the evidence contained in
 10 the transcript, exhibits, and documents ~~therein~~ filed by the
 11 commissioner, together with such additional proper evidence
 12 as may be offered by any party to the appeal.

13 (5) After hearing the appeal, the court may affirm,
 14 modify, or reverse the order or action of the commissioner,
 15 in whole or in part, or remand the action to the
 16 commissioner for further proceedings in accordance with the
 17 court's direction.

18 (6) Costs ~~shall~~ must be awarded as in civil actions.

19 (7) Appeal may be taken to the supreme court from the
 20 judgment of the district court as in other civil cases to
 21 which the state is a party. A stay of the effectiveness of
 22 any such judgment may be made only by order of the supreme
 23 court upon the giving of such security as that court ~~deems~~
 24 considers proper.

25 (8) This section ~~shall~~ does not apply to appeals as to

11
 12

1 matters covered by chapter 16."

2 **Section 9.** Section 33-2-303, MCA, is amended to read:

3 "33-2-303. Filing and endorsement of contract. Every
4 Each insurance contract, cover, note, or certificate of
5 insurance procured and delivered as surplus lines insurance
6 under this part ~~shall~~ must be filed with the commissioner
7 and endorsed as "issued in an unauthorized insurer under The
8 Surplus Lines Insurance Law, under agent surplus lines
9 insurance producer license No." and "NOT covered by
10 the property and casualty guaranty fund of this state if the
11 unauthorized insurer becomes insolvent". The surplus lines
12 agent producer shall properly fill in and sign the
13 endorsement."

14 **Section 10.** Section 33-2-308, MCA, is amended to read:

15 "33-2-308. Evidence of the insurance -- changes --
16 penalty. (1) Upon placing surplus lines insurance, the
17 surplus lines agent insurance producer shall promptly issue
18 and deliver to the insured or the producing agent insurance
19 producer evidence of the insurance, consisting either of the
20 policy as issued by the insurer or, if such the policy is
21 not then available, a cover note or certificate of insurance
22 signed or countersigned by the agent insurance producer.
23 Such The cover note or certificate must show the subject,
24 coverage, conditions, and term of the insurance, the premium
25 charged and taxes collected from the insured, and the name

1 and address of the insurer. If the direct risk is assumed by
2 more than one insurer, the cover note or certificate must
3 state the name and address and proportion of the entire
4 direct risk assumed by each such insurer.

5 (2) If after the issuance and delivery of any such
6 cover note or certificate there is any change as to the
7 identity of the insurers or the proportion of the direct
8 risk assumed by the insurer as stated in the original cover
9 note or certificate or in any other material respect as to
10 the insurance coverage evidenced by the cover note or
11 certificate, the agent insurance producer shall promptly
12 issue and deliver to the insured a substitute cover note or
13 certificate accurately showing the current status of the
14 coverage and the insurers responsible ~~thereunder~~ under the
15 coverage.

16 (3) If a policy issued by the insurer is not available
17 upon placement of the insurance and the agent insurance
18 producer has issued and delivered a cover note or
19 certificate as ~~hereinabove~~ provided in subsection (2), upon
20 request therefor by the insured, the agent insurance
21 producer shall as soon as reasonably possible procure from
22 the insurer its policy evidencing such the insurance and
23 deliver such the policy to the insured in replacement of the
24 cover note or certificate ~~theretofore~~ previously issued.

25 (4) Any A surplus lines agent insurance producer who

1 knowingly or negligently issues or delivers a false cover
 2 note or certificate of insurance or fails promptly to notify
 3 the insured of any material change with respect to ~~such the~~
 4 insurance by delivery to the insured of a substitute cover
 5 note or certificate as provided in subsection (2) ~~shall-be~~
 6 is guilty of a violation of this code and upon conviction
 7 ~~shall-be is~~ subject to the penalties provided by 33-1-104 or
 8 to any greater applicable penalty otherwise provided by law.

9 (5) A surplus lines agent insurance producer may not
 10 issue or deliver any evidence of insurance or purport to
 11 insure or represent that insurance will be or has been
 12 written by any an eligible surplus lines insurer unless he
 13 has authority from the insurer to cause the risk to be
 14 insured or has received information from the insurer in the
 15 regular course of business that ~~such the~~ insurance has been
 16 granted."

17 **Section 11.** Section 33-2-309, MCA, is amended to read:

18 "33-2-309. Liability of insurer as to losses and
 19 unearned premiums. (1) As to a surplus lines risk ~~which that~~
 20 has been assumed by an unauthorized insurer pursuant to The
 21 Surplus Lines Insurance Law and if the premium ~~thereon on~~
 22 the surplus lines risk has been received by the surplus
 23 lines agent insurance producer who placed ~~such the~~
 24 insurance, in all questions thereafter arising under the
 25 coverage as between the insurer and the insured, the insurer

1 ~~shall-be-deemed is considered~~ to have received the premium
 2 due to it for such coverage. The insurer ~~shall-be is~~ liable
 3 to the insured as to losses covered by ~~such the~~ insurance
 4 and for unearned premiums ~~which that~~ may become payable to
 5 the insured upon cancellation of ~~such the~~ insurance, whether
 6 or not in fact the agent insurance producer is indebted to
 7 the insurer with respect to ~~such the~~ insurance or for any
 8 other cause. This provision ~~shall does~~ not affect rights as
 9 between the insurer and the surplus lines agent insurance
 10 producer.

11 (2) A payment of premium to a surplus lines agent
 12 insurance producer acting for a person other than himself in
 13 negotiating, continuing, or reviewing a policy of insurance
 14 under this part is considered to be payment to the insurer,
 15 notwithstanding any conditions or stipulations that may be
 16 inserted in the policy or contract.

17 (3) Each unauthorized insurer assuming a surplus lines
 18 direct risk under The Surplus Lines Insurance Law is
 19 considered ~~thereby~~ to have subjected itself to the terms of
 20 this section."

21 **Section 12.** Section 33-2-316, MCA, is amended to read:

22 "33-2-316. Rules. (1) The commissioner shall make or
 23 may approve and adopt reasonable rules, consistent with this
 24 part, for any or all of the following purposes:

25 (a) effectuation of The Surplus Lines Insurance Law;

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(b) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus lines insurer or insurers; and

(c) establishment, procedures, and operations of any voluntary organization of surplus lines insurance agents producers or others designed to assist such agents surplus lines insurance producers to comply with such the law.

(2) Such The rules shall--be are subject to the procedures and carry the penalty provided by 33-1-313."

Section 13. Section 33-2-317, MCA, is amended to read:

"33-2-317. Exemptions. The provisions of this-surplus lines--insurance--law The Surplus Lines Insurance Law controlling the placement of insurance with unauthorized insurers does do not apply to reinsurance or to the following insurances when so placed by a licensed insurance agent producer of this state:

(1) wet marine and transportation insurances;

(2) insurance on subjects located, resident residing, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;

(3) insurance on property or operations of railroads engaged in interstate commerce; and

(4) insurance of aircraft owned or operated by

manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of such the aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of such the aircraft."

Section 14. Section 33-2-708, MCA, is amended to read:

"33-2-708. Fees and licenses. (1) The Except as provided in 33-17-212(2), the commissioner shall collect in advance and the persons so served shall so pay to the commissioner the following fees and-licenses:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (1)(b) below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents, and filings required in connection with such the application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers \$-300-00 \$-500-00 \$ 600.00

(B) foreign insurers 300-00 500-00 600.00

(ii) annual continuation of certificate of authority ..

..... 300-00

500-00 600.00

1 (iii) reinstatement of certificate of authority
 2 25.00
 3 (iv) amendment of certificate of authority 50.00
 4 (b) articles of incorporation:
 5 (i) filing original articles of incorporation of a
 6 domestic insurer, exclusive of fees required to be paid by
 7 the corporation to the secretary of state 20.00
 8 (ii) filing amendment of articles of incorporation,
 9 domestic and foreign insurers, exclusive of fees required to
 10 be paid to the secretary of state by a domestic corporation
 11 25.00
 12 (c) filing bylaws or amendment thereto to bylaws where
 13 required 10.00
 14 (d) filing annual statement of insurer, other than as
 15 part of application for original certificate of authority ..
 16 25.00
 17 ~~{e}--resident-agent's-insurance-producer's-license:~~
 18 ~~{i}--application--for--original--license,--including~~
 19 ~~issuance-of-license,if-issued-{life-and/or-disability}----~~
 20 ~~-----15.00~~
 21 ~~{ii}--application--for--original--license,--including~~
 22 ~~issuance-of-license,if-issued--{other--than--life--and/or~~
 23 ~~disability}-----15.00~~
 24 ~~{iii}--appointment-of-agent,each-insurer-----10.00~~
 25 ~~{iv}--annual-renewal,each-insurer-of-license-----10.00~~

1 ~~-15.00~~
 2 ~~{v}{iii}-temporary-license-----10.00-15.00~~
 3 ~~{vi}{iv}-amendment--of--license--{excluding--additions~~
 4 ~~thereto-to-license}-or-reissuance-of-master-license-----~~
 5 ~~-----10.00-15.00~~
 6 (E) INSURANCE PRODUCER'S LICENSE:
 7 (I) APPLICATION FOR ORIGINAL LICENSE, INCLUDING
 8 ISSUANCE OF LICENSE, IF ISSUED 15.00
 9 (II) APPOINTMENT OF INSURANCE PRODUCER, EACH INSURER ..
 10 10.00
 11 (III) TEMPORARY LICENSE 15.00
 12 (IV) AMENDMENT OF LICENSE (EXCLUDING ADDITIONS TO
 13 LICENSE) OR REISSUANCE OF MASTER LICENSE 15.00
 14 ~~{f}{E}{F} nonresident agent's insurance producer's~~
 15 ~~license:~~
 16 (i) application for original license, including
 17 issuance of license, if issued ~~{life-and/or-disability}~~
 18 100.00
 19 (ii) application--for--original--license,--including
 20 issuance--of--license,if-issued--{other--than--life--and/or
 21 disability}-----100.00
 22 ~~{iii}--appointment-of-agent,each-insurer-----10.00~~
 23 ~~APPOINTMENT OF INSURANCE PRODUCER, EACH INSURER 10.00~~
 24 ~~{iv}{III} annual renewal,each-insurer of license~~
 25 ~~-----10.00~~

1 ~~100-00~~ 50-00 ~~40-00~~ 10.00
2 ~~(v)(i)(i)(IV)~~ amendment of license (excluding additions
3 ~~thereto to license)~~ or reissuance of master license 10.00
4 ~~(g)(F)(G)~~ solicitor's license:
5 ~~(i)--application---for---original---license,--including~~
6 ~~issuance-of-license,if-issued-----15-00~~
7 ~~(ii)--annual-renewal-of-license-----15-00~~
8 ~~(iii)--appointment-of-solicitor-----10-00~~
9 ~~(h)~~ examination for license as agent--or--solicitor
10 insurance producer, each examination 15.00
11 ~~(i)(h)(G)(H)~~ surplus lines agent insurance producer
12 license:
13 (i) application for original license and for issuance
14 of license, if issued 50.00
15 (ii) annual renewal of license 50.00
16 ~~(j)(i)(H)(I)~~ adjuster's license:
17 (i) application for original license and for issuance
18 of license, if issued 15.00
19 (ii) annual renewal of license 15.00
20 ~~(k)(j)(i)(J)~~ insurance vending machine license, each
21 machine, each year 10.00
22 ~~(i)(k)(i)(J)(K)~~ commissioner's certificate under seal
23 (except when on certificates of authority or licenses)
24 10.00
25 ~~(m)(i)(K)(L)~~ copies of documents on file in the

1 commissioner's office, per page50
2 ~~(n)(m)(i)(M)~~ policy forms:
3 (i) filing each policy form 25.00
4 (ii) filing each application, rider, endorsement,
5 amendment, insert page, schedule of rates, and clarification
6 of risks 10.00
7 (iii) maximum charge if policy and all forms submitted
8 at one time or resubmitted for approval within 180 days
9 100.00
10 (2) The commissioner shall promptly deposit with the
11 state treasurer to the credit of the general fund of this
12 state all fines and penalties, those amounts received
13 pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees
14 and examination and miscellaneous charges received pursuant
15 to Title 33, chapter 11, part 1, that are collected by him
16 pursuant to Title 33 and the rules adopted thereunder under
17 Title 33.
18 (3) All fees are considered fully earned when
19 received. In the event of overpayment, only those amounts in
20 excess of \$10 will be refunded.
21 (4) All fees and examination and miscellaneous
22 charges, except fines or penalties or those amounts received
23 pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by
24 the commissioner pursuant to Title 33 and the rules adopted
25 thereunder under Title 33 must be deposited in the insurance

regulatory trust account pursuant to 17-2-121 through 17-2-123."

Section 15. Section 33-7-101, MCA, is amended to read:

"33-7-101. Scope of chapter -- provisions applicable.

(1) Except as herein provided in this section, societies ~~shall--be~~ are governed by this chapter and ~~shall--be~~ are exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state but for every other purpose. No law hereafter enacted ~~shall--apply~~ applies to ~~them~~ societies unless they ~~be~~ are expressly designated therein in the law.

(2) In addition to the provisions contained in this chapter, other chapters and provisions of this title ~~shall~~ apply to fraternal benefit societies to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications thereof of this chapter, as follows: parts 17-27-37 through 47 and 7 of chapter 1; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 13; 33-3-308; 33-15-502; chapter 17; chapter 18; chapter 20; and chapter 22."

Section 16. Section 33-8-213, MCA, is amended to read:

"33-8-213. (Temporary) Exemption from agent insurance producer appointment requirements. (1) For purposes of the plan:

(a) an insurer that has entered into an agreement as

provided in 33-8-212 may accept applications for insurance coverage from any agent insurance producer even though that agent insurance producer has not been appointed by the insurer; and

(b) an agent insurance producer may place business, as to any type of insurance for which he is licensed at the time, with any insurer participating in the plan even though the agent insurance producer has not been appointed as an agent insurance producer by that insurer.

~~{2}--AN-INSURER-THAT-ISSUES-INSURANCE-COVERAGE-UPON-AN APPLICATION-SUBMITTED-BY-AN-AGENT-WHO-HAS-NOT-BEEN-APPOINTED BY--THE--INSURER--SHALL--PAY--THE--AGENT--A--COMMISSION--IN CONFORMITY--WITH--THE-INSURER'S-FILED-RATES,--RATING-PLANS,--OR FORMS-FOR-THE-KIND-OF-INSURANCE-EFFECTED--~~

~~{2}--AN-INSURER-THAT-ISSUES-INSURANCE-COVERAGE-UPON-AN APPLICATION-SUBMITTED-BY-AN-INSURANCE-PRODUCER-WHO-HAS-NOT BEEN-APPOINTED--BY--THE--INSURER--SHALL--PAY--THE--INSURANCE PRODUCER-A-COMMISSION-IN-CONFORMITY-WITH-THE-INSURER'S-FILED RATES,--RATING--PLANS,--OR--FORMS--FOR-THE-KIND-OF-INSURANCE EFFECTED--~~

~~{3}{2}{3}{2}~~ An agent insurance producer who countersigns a policy, when a countersignature is required by 33-17-1111, ~~shall~~ must be paid a countersignature commission as provided in 33-17-1113. (Terminates July 1, 1989--sec. 22, Ch. 11, Sp. L. March 1986.)"

Section 17. Section 33-17-101, MCA, is amended to

read:

"33-17-101. Scope of chapter. (1) The purpose of this chapter is to govern the qualifications and procedures for licensing insurance producers.

(2) This chapter shall apply as applies to all stock, mutual, and reciprocal insurers and as to all kinds of insurance and annuities."

Section 18. Section 33-17-102, MCA, is amended to

read:

"33-17-102. Definitions. As used in this title, the following definitions apply:

(1) An "adjuster" is "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of such an independent contractor or for fee or commission investigates and negotiates settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer. The term does not include a:

(a) licensed attorney who is qualified to practice law in this state; or

(b) salaried employee of an insurer or of a managing general agent; or

(c) a licensed agent insurance producer who adjusts or assists in adjustment of losses arising under policies

issued by the insurer.

~~{2}--A--"public-adjuster"--is--an--adjuster--employed--by--and--representing--the--interests--of--the--insured;--The--commissioner--may--adopt--rules--providing--for--the--examination,--licensure,--bonding,--and--regulation--of--public--adjusters;--~~

~~{3}--An--"agent"--is--an--individual,--partnership,--or--corporation--appointed--by--an--insurer--to--solicit--applications--for--insurance--or--annuities--or--to--negotiate--insurance--on--its--behalf--and,--if--authorized--to--do--so--by--the--insurer,--to--effectuate--and--countersign--insurance--contracts;--~~

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on such coverage.

(b) The term does not mean:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the

1 laws of a state in which the insurer is authorized to
 2 transact insurance; or

3 (B) a health service corporation as defined in
 4 33-30-101;

5 (iv) a life, disability, property, or casualty
 6 insurance producer who is licensed in this state and whose
 7 activities are limited exclusively to the sale of insurance;

8 (v) a creditor on behalf of its debtors with respect
 9 to insurance covering a debt between the creditor and its
 10 debtors;

11 (vi) a trust established in conformity with 29 U.S.C.
 12 186 or the trustees, agents, and employees of the trust;

13 (vii) a trust exempt from taxation under section 501(a)
 14 of the Internal Revenue Code or the trustees and employees
 15 of the trust;

16 (viii) a custodian acting pursuant to a custodian
 17 account that meets the requirements of section 401(f) of the
 18 Internal Revenue Code or the agents and employees of the
 19 custodian;

20 (ix) a bank, credit union, or other financial
 21 institution that is subject to supervision or examination by
 22 federal or state banking authorities;

23 (x) a company that issues credit cards and that
 24 advances for and collects premiums or charges from its
 25 credit card holders who have authorized it to do so, if the

1 company does not adjust or settle claims; or

2 (xi) a person who adjusts or settles claims in the
 3 normal course of his practice or employment as an attorney
 4 and who does not collect charges or premiums in connection
 5 with life or disability insurance or annuities.

6 (4) "Administrator license" means a document issued by
 7 the commissioner that authorizes a person to act as an
 8 administrator.

9 (4)(5) A-"consultant"--is "Consultant" means a person
 10 who for a fee examines, appraises, reviews, or evaluates an
 11 insurance policy, annuity, or pension contract, plan, or
 12 program or who makes recommendations or gives advice on an
 13 insurance policy, annuity, or pension contract, plan, or
 14 program.

15 (5)--A--"solicitor"--is--an--individual--appointed--and
 16 authorized--by--an--agent--to--solicit--applications--for
 17 insurance;--other--than--life--insurance--or--disability
 18 insurance;--as--a--representative--of--such--agent;--and--to--collect
 19 premiums--thereon--when--expressly--so--authorized--by--the--agent;

20 (6)--A--"managing--general--agent"--is--an--individual,
 21 partnership,--or--corporation--appointed--as--an--independent
 22 contractor--by--one--or--more--insurers--for--the--principal--purpose
 23 of--exercising--general--supervision--over--the--business--of--the
 24 insurer--in--this--state;--including--the--authority--to--appoint
 25 agents--for--such--insurers--and--to--terminate--such--appointments;

1 (6) "Consultant license" means a document issued by
 2 the commissioner that authorizes a person to act as an
 3 insurance consultant.

4 (7) "Controlled business" means insurance procured or
 5 to be procured by or through a person upon the life, person,
 6 property, or risks of himself, his spouse, his employer, or
 7 his business.

8 (8) "Individual" means a private or natural person, as
 9 distinguished from a partnership, corporation, or
 10 association.

11 (9) "Insurance producer", except as provided in
 12 33-17-103:

13 (a) means:

14 (i) a person who solicits, negotiates, effects,
 15 procures, delivers, renews, continues, or binds:

16 (A) policies of insurance for risks residing, located,
 17 or to be performed in this state; or

18 (B) membership contracts as defined in 33-30-101;

19 (ii) a managing general agent. For purposes of this
 20 definition, a "managing general agent" is a person who, on
 21 behalf of an insurer, exercises general supervision over the
 22 business of the insurer in this state, including the
 23 authority to contract with an insurance producer for the
 24 insurer and terminate those contracts.

25 (b) does not mean a customer service representative.

1 For purposes of this definition, a "customer service
 2 representative" means a salaried employee or OF an insurance
 3 producer who assists and is responsible to the insurance
 4 producer but--who--is--not--authorized--to--effect--policies--of
 5 insurance.

6 (10) "License" means a document issued by the
 7 commissioner that authorizes a person to act as an insurance
 8 producer for the kinds of insurance specified in the
 9 document. The license itself does not create actual,
 10 apparent, or inherent authority in the holder to represent
 11 or commit an insurer to a binding agreement.

12 (11) "Person" means an individual, partnership,
 13 corporation, association, or other legal entity.

14 (12) "Public adjuster" means an adjuster employed by
 15 and representing the interests of the insured."

16 **Section 19.** Section 33-17-103, MCA, is amended to
 17 read:

18 "33-17-103. Exceptions and exemptions from definition
 19 of agent, managing-general-agent, and--solicitor insurance
 20 producer. The definitions definition of agent, managing
 21 general-agent, and-solicitor insurance producer contained in
 22 33-17-102 shall does not be-considered-to include:

23 {1}--individuals-employed-and-used-by--agents--for--the
 24 performance--of--clerical,--stenographic,--and--similar-office
 25 duties;--incidental-taking-of-an--application--for--insurance

from time to time in the office of the employing agent shall not constitute such an employee as an agent or solicitor if the employee's compensation is not contingent upon or relating to the volume of such applications, insurance, or premiums.

(2) a supervising salaried officer, supervising salaried employee, or other person or entity controlled by an insurer and compensated strictly on a salary basis by the insurer, who solicits only with or in conjunction with duly licensed agents of the insurer;

(3) the attorney in fact of a reciprocal insurer or the salaried traveling representative of a reciprocal or mutual insurer not compensated on a commission basis;

(4) a person who secures and forwards information for the purpose of an existing group insurance contract or for enrolling individuals under an existing group insurance contract or issuing certificates thereunder where no commission is paid for such services.

(1) a person who is a regularly salaried officer or employee of an insurer and who is engaged in the performance of usual and customary executive, administrative, or clerical duties and whose duties do not include the negotiation or solicitation of insurance;

(2) a person who is a salaried employee in the office of an insurance producer and who devotes his full time to

clerical and administrative services, including the incidental taking of insurance applications and receipt of premiums in the office of his employer, if the employee does not receive any commissions on the applications and his compensation is not varied by the volume of applications or premiums he takes or receives;

(3) a person who secures and furnishes information for the purpose of group life insurance, annuities, group or blanket accident and disability insurance or for the purpose of enrolling individuals under such plans, issuing certificates under such plans, or otherwise assisting in administering such plans, if no commission is paid for the service;

(4) an employer, his officers, or employees or the trustees of an employee trust plan, to the extent that the employer, officers, employees, or trustees are engaged in the administration of operation of a program of employee benefits for their own employees or the employees of their subsidiaries or affiliates if the program involves the use of insurance issued by an insurer and the employer, officers, employees, or trustees are not compensated in any manner, directly or indirectly, by the insurer issuing the contracts; or

(5) a person who is:

(a) an employee of an insurer or of an organization

1 employed by an insurer, which insurer or organization is
 2 engaged in the inspection, rating, or classification of
 3 insurance risks or in the supervision of the training of
 4 insurance producers; and

5 (b) not individually engaged in the solicitation or
 6 negotiation of insurance policies and contracts."

7 **Section 20.** Section 33-17-201, MCA, is amended to
 8 read:

9 "33-17-201. (Temporary) License required of agents,
 10 ~~managing-general-agents,-and-solicitors~~ insurance producer
 11 ~~-- forms. (1) No Except as provided in 33-17-103 and~~
 12 ~~subsection (5) of this section, a person shall may not in~~
 13 ~~this state act as or hold himself out to be an agent-or~~
 14 ~~solicitor-as-to~~ insurance producer for subjects of insurance
 15 located, resident residing, or to be performed in this state
 16 unless then licensed as ~~such-agent-or-solicitor~~ an insurance
 17 producer under this chapter.

18 ~~{2}--No-person-may-act-or--hold--himself--out--in--this~~
 19 ~~state--to--be-a-managing-general-agent-unless-licensed-as-an~~
 20 ~~insurance-agent-under-this--chapter--and--appointed--by--the~~
 21 ~~insurers-represented;~~

22 ~~{3}--No-agent--or--solicitor--shall--solicit--or--take~~
 23 ~~application-for,-procure,-or-place-for-others--any--kind--of~~
 24 ~~insurance-as-to-which-he-is-not-then-licensed;~~

25 ~~{4}--No-agent--shall--place--any--business,-other-than~~

1 ~~coverage-of-his-own-risks,-with-any-insurer-as-to--which--he~~
 2 ~~does--not--then--hold--a-validated-appointment-or-license-as~~
 3 ~~agent-under-this-chapter,-except-as-provided--in--33-17-1104~~
 4 ~~as--to--life-or-disability-insurance-agents-and-in-33-8-213-~~

5 ~~{2}--NO-INSURANCE-PRODUCER-SHALL--PLACE--ANY--BUSINESS,~~
 6 ~~OTHER-THAN-COVERAGE-OF-HIS-OWN-RISKS,-WITH-ANY-INSURER-AS-TO~~
 7 ~~WHICH--HE--DOES--NOT--THEN--HOLD--A-VALIDATED-APPOINTMENT-OR~~
 8 ~~LICENSE-AS-INSURANCE-PRODUCER-UNDER-THIS-CHAPTER,-EXCEPT--AS~~
 9 ~~PROVIDED--IN--33-17-1104--AS-TO-LIFE-OR-DISABILITY-INSURANCE~~
 10 ~~AGENTS-AND-IN-33-8-213-~~

11 ~~{5}{2}{3}{2}~~ The commissioner may prescribe by rule
 12 and make available the forms required in connection with
 13 application for, issuance, continuation, or termination of
 14 licenses-and-appointments a license.

15 ~~{6}{3}{4}{3}~~ Unless licensed as a life insurance agent
 16 producer as required by this section, ~~no~~ a person shall may
 17 not in this state solicit life insurance or annuities or
 18 procure applications therefor for life insurance or
 19 annuities or engage or hold himself out as engaging in the
 20 business of analyzing or abstracting life insurance policies
 21 or annuities or of counseling or advising or giving
 22 opinions, other than as a licensed attorney, relative to
 23 such insurance or annuities for fee, commission, or other
 24 compensation, other than as a salaried ~~bona--fide~~ full-time
 25 employee ~~so~~ counseling and advising his employer relative to

the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of ~~such the~~ employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of ~~such the~~ employees.

~~(7)(4)(5)(4)~~ A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose.

~~(5)(6)(5)~~ A representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer, except that a license is not required of:

(a) an officer, employee, or secretary of a fraternal benefit society or of a subordinate lodge or branch of a fraternal benefit society who devotes substantially all of his time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon that THE number or amount of insurance contracts solicited or negotiated; or

(b) a representative of a fraternal benefit society who devotes or intends to devote less than 50% of his time to the solicitation and procurement of insurance contracts

for the fraternal benefit society. A person who in the preceding calendar year has solicited and procured life insurance with a face amount in excess of \$50,000 or, in the case of any other kind or kinds of insurance that the fraternal benefit society may write, on more than 25 individuals and who has received or will receive a commission or other compensation for the insurance is presumed to be devoting or intending to devote 50% of his time to the solicitation or procurement of insurance contracts for the fraternal benefit society. (Terminates July 1, 1989--sec. 22, Ch. 11, Sp. L. March 1986.)

33-17-201. (Effective July 1, 1989) License required of ~~agents, managing general agents, and solicitors~~ insurance producer -- forms. (1) No A person shall may not in this state act as or hold himself out to be an agent or solicitor as--to insurance producer for subjects of insurance located, resident residing, or to be performed in this state unless then licensed as such--agent--or--solicitor an insurance producer under this chapter.

~~(2)--No person may act or hold himself out in this state to be a managing general agent unless licensed as an insurance agent under this chapter and appointed by the insurers represented.~~

~~(3)--No agent or solicitor shall solicit or take application for, procure, or place for others any kind of~~

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1 insurance-as-to-which-he-is-not-then-licensed:

2 (4)--No--agent--shall--place--any--business,--other--than
3 coverage-of-his-own-risks,--with-any-insurer-as-to--which--he
4 does--not--then--hold--a-validated-appointment-or-license-as
5 agent-under-this-chapter,--except-as-provided--in--33-17-1104
6 as-to-life-or-disability-insurance-agents:

7 (2)--NO--INSURANCE--PRODUCER--SHALL--PLACE--ANY--BUSINESS,
8 OTHER--THAN--COVERAGE--OF--HIS--OWN--RISKS,--WITH--ANY--INSURER--AS--TO
9 WHICH--HE--DOES--NOT--THEN--HOLD--A--VALIDATED--APPOINTMENT--OR
10 LICENSE--AS--INSURANCE--PRODUCER--UNDER--THIS--CHAPTER,--EXCEPT--AS
11 PROVIDED--IN--33-17-1104--AS--TO--LIFE--OR--DISABILITY--INSURANCE
12 PRODUCERS:

13 (5)(2)(3)(2) The commissioner may prescribe by rule
14 and make available the forms required in connection with
15 application for, issuance, continuation, or termination of
16 licenses-and-appointments a license.

17 (6)(3)(4)(3) Unless licensed as a life insurance agent
18 producer as required by this section, no a person shall may
19 not in this state solicit life insurance or annuities or
20 procure applications therefor for life insurance or
21 annuities or engage or hold himself out as engaging in the
22 business of analyzing or abstracting life insurance policies
23 or annuities or of counseling or advising or giving
24 opinions, other than as a licensed attorney, relative to
25 such insurance or annuities for fee, commission, or other

1 compensation, other than as a salaried bona-fide full-time
2 employee so counseling and advising his employer relative to
3 the insurance interests of the employer and of the
4 subsidiaries or business affiliates of the employer or with
5 respect to the insurance interests of employees of such the
6 employer, subsidiaries, or affiliates under group insurance
7 or similar insurance plans arranged by the employer or
8 employers of such the employees.

9 (7)(4)(5)(4) A person licensed to sell coverage only
10 for the all-risk federal crop insurance program shall
11 receive a license restricted to that purpose.

12 (5)(6)(5) A representative of a fraternal benefit
13 society who solicits and negotiates insurance contracts is
14 an insurance producer and is subject to the same licensing
15 requirements as those for an insurance producer, except that
16 a license is not required of:

17 (a) an officer, employee, or secretary of a fraternal
18 benefit society or of a subordinate lodge or branch of a
19 fraternal benefit society who devotes substantially all of
20 his time to activities other than the solicitation or
21 negotiation of insurance contracts and who receives no
22 commission or other compensation directly dependent upon
23 that THE number or amount of insurance contracts solicited
24 or negotiated; or

25 (b) a representative of a fraternal benefit society

1 who devotes or intends to devote less than 50% of his time
 2 to the solicitation and procurement of insurance contracts
 3 for the fraternal benefit society. A person who in the
 4 preceding calendar year has solicited and procured life
 5 insurance with a face amount in excess of \$50,000 or, in the
 6 case of any other kind or kinds of insurance that the
 7 fraternal benefit society may write, on more than 25
 8 individuals and who has received or will receive a
 9 commission or other compensation for the insurance is
 10 presumed to be devoting or intending to devote, 50% of his
 11 time to the solicitation or procurement of insurance
 12 contracts for the fraternal benefit society."

13 **Section 21.** Section 33-17-211, MCA, is amended to
 14 read:

15 "33-17-211. Application General qualifications --
 16 application for license. (1)--Application--for--an--agent--or
 17 solicitor--license--must--be--made--to--the--commissioner--by--the
 18 applicant--and--be--signed--and--sworn--to--by--the--applicant--before
 19 a--notary--public--

20 (2)--The--commissioner--may--designate--the--forms--for
 21 application--for--license--which--must--require--full--answers--to
 22 such--questions--as--may--reasonably--be--necessary--to--determine
 23 the--applicant's--identity--residence--personal--history--
 24 business--record--experience--and--training--in--insurance--and
 25 other--facts--as--required--by--the--commissioner--to--determine

1 whether--the--applicant--meets--the--applicable--qualifications
 2 for--the--license--applied--for--

3 (3)--If--for--an--agent's--license--the--application--must
 4 state--the--kinds--of--insurance--proposed--to--be--transacted--and
 5 be--accompanied--by--written--appointment--of--the--applicant--as
 6 agent--by--an--authorized--insurer--subject--to--issuance--of--the
 7 license--

8 (4)--If--for--a--solicitor's--license--the--application--must
 9 be--accompanied--by--written--appointment--of--applicant--as
 10 solicitor--by--a--licensed--agent--subject--to--issuance--of--the
 11 license--

12 (5)--If--the--applicant--for--an--agent--license--is--a
 13 partnership--or--corporation--the--application--shall--show--in
 14 addition--the--names--of--all--members--officers--and--directors
 15 and--shall--designate--each--individual--who--is--to--exercise--the
 16 powers--to--be--conferred--by--the--license--upon--the--partnership
 17 or--corporation--Each--such--individual--so--designated--shall
 18 furnish--information--as--to--himself--as--part--of--the
 19 application--as--though--for--an--individual--license--

20 (6)--If--the--applicant--for--an--agent--license--is--an
 21 agents'-association--pursuant--to--33-17-205--the--application
 22 must--show--the--names--and--residence--addresses--of--the
 23 association's--officers--and--trustees--

24 (7)--If--for--license--as--either--agent--or--solicitor--the
 25 application--must--also--show--whether--applicant--was--ever

previously--licensed--to--transact--any-kind-of-insurance-in
this-state-or-elsewhere; whether-any-such-license--was--ever
refused, suspended, or revoked; whether-any-insurer, general
agent, or agent, in the case of a solicitor application,
claims applicant to be indebted to it and, if so, the
details thereof and the defenses, if any, of the applicant
thereto; and whether applicant ever had an agency contract
canceled and the facts thereof.

(8)--The commissioner shall require as part of the
application for license the certificate of an officer or
representative of the insurer proposed to be represented, in
the case of applicants for license as agent, or of the
proposed employing agent, in the case of applicants for
license as solicitor, as to whether the applicant is known
to such officer or representative, whether the insurer or
agent has investigated the character and business record of
the applicant and the uses to be made of the license, if
granted, and his opinion, based on such investigation, as to
applicant's trustworthiness and competence.

(9)--All such applications must be accompanied by the
applicable license fee, appointment of agent fee where
applicable, and examination fee where an examination is
required under 33-17-212, all in the respective amounts
stated in 33-2-708. (1) An individual applying for a
license shall apply on a form specified by the commissioner

and declare under penalty of refusal, suspension, or
revocation of the license that statements made in the
application are true, correct, and complete to the best of
the individual's knowledge and belief. Before approving the
application, the commissioner shall verify that the
individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for
refusal, suspension, or revocation set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each
kind of insurance for which the individual has applied;

(e) is a resident of this state or of another state
that grants similar privileges to residents of this state;

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is
qualified in the kind or kinds of insurance for which he
applies to be licensed and is reasonably familiar with the
provisions of this code which govern his operations as an
insurance producer; and

(h) if applying for a license as to life or disability
insurance:

(i) is not a funeral director, undertaker, or
mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of

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1 a funeral director, undertaker, or mortician operating in
 2 this or any other state; or

3 (iii) does not hold an interest in or benefit from a
 4 business of a funeral director, undertaker, or mortician
 5 operating in this or any other state.

6 (2) A person acting as an insurance producer shall
 7 obtain a license. A person shall apply for a license on a
 8 form specified by the commissioner. Before approving the
 9 application, the commissioner shall verify that:

10 (a) the person meets the requirements listed in
 11 subsection (1);

12 (b) the person has paid the licensing fees stated in
 13 33-2-708 for each individual licensed in conjunction with
 14 the person's license. A licensed person shall promptly
 15 notify the commissioner of each change relating to an
 16 individual listed in the license.

17 (c) the person has designated a licensed officer
 18 responsible for compliance by the person with the insurance
 19 laws and rules of this state;

20 (d) each member and employee of a partnership and each
 21 officer, director, stockholder, or employee of a corporation
 22 who is acting as an insurance producer in this state has
 23 obtained a license;

24 (e) (i) if the person is a partnership or corporation,
 25 the transaction of insurance business is within the purposes

1 stated in the partnership agreement or the articles of
 2 incorporation; and

3 (ii) if the person is a corporation, the secretary of
 4 state has issued a certificate of incorporation under
 5 35-1-203 or 35-2-203.

6 (3) The commissioner may license as a resident
 7 insurance producer an association of licensed Montana
 8 insurance producers, whether or not incorporated, formed and
 9 existing substantially for purposes other than insurance.
 10 The license must be used solely for the purpose of enabling
 11 the association to place, as a resident insurance producer,
 12 insurance of the properties, interests, and risks of the
 13 state of Montana and of other public agencies, bodies, and
 14 institutions and to receive the customary commission for the
 15 placement. The president and secretary of the association
 16 shall apply for the license in the name of the association,
 17 and the commissioner shall issue the license to the
 18 association in its name alone. The fee for the license is
 19 the same as that required by 33-2-708 for the license of an
 20 insurance producer. The commissioner may, after a hearing
 21 with notice to the association, revoke the license if he
 22 finds that continuation of the license is not in the public
 23 interest or that a ground listed in 33-17-1001 exists.

24 (4) An insurance producer using an assumed business
 25 name shall register the name with the commissioner before

1 using it."

2 **Section 22.** Section 33-17-212, MCA, is amended to
3 read:

4 "33-17-212. Examination required -- exceptions --
5 fees. ~~{1}~~ After completion and filing of the application for
6 ~~license as required under 33-17-211, the commissioner shall~~
7 ~~subject each applicant for license as agent or solicitor,~~
8 ~~unless exempted therefrom under subsection (5) below, to an~~
9 ~~examination as to his competence to act as such agent or~~
10 ~~solicitor. The commissioner may either conduct the~~
11 ~~examination or arrange for the examination to be conducted~~
12 ~~by a testing service, which shall recover the cost of the~~
13 ~~examination from the applicant.~~ (1) Except as provided in
14 subsection (7), an individual applying for a license shall
15 pass a written examination. The examination must test the
16 knowledge of the individual concerning each kind of
17 insurance listed in subsection (6) for which application is
18 made, the duties and responsibilities of an insurance
19 producer, and the insurance laws and rules of this state.
20 The examination must be developed and conducted under rules
21 adopted by the commissioner.

22 (2) The commissioner may conduct the examination or
23 make arrangements, including contracting with an outside
24 testing service, for administering the examination and
25 collecting the fees required by 33-2-708. The commissioner

1 may arrange for the testing service to recover the cost of
2 the examination from the applicant.

3 (3) Each individual applying for an examination shall
4 remit the fees required by 33-2-708.

5 (4) An individual who fails to appear for the
6 examination as scheduled or fails to pass the examination
7 may reapply for an examination and shall remit all required
8 fees and forms before being rescheduled for another
9 examination.

10 {2}(5) If the applicant is a partnership or
11 corporation, the examination shall be so taken by each
12 individual who is to be named in the license as having
13 authority to act for the applicant in its insurance
14 transactions under the license shall take the examination.

15 {3}(6) Examination of an applicant for an agent's a
16 license shall must cover all of the kinds of insurance for
17 which the applicant has applied to be licensed, as
18 constituted by any one or more of the following
19 classifications:

20 (a) life insurance;

21 (b) disability insurance;

22 (c) property insurance; ~~for~~ For the purposes of this
23 provision, "marine" property insurance shall be deemed to be
24 included in "property" includes marine insurance.

25 (d) casualty insurance;

1 ~~{e}~~--vehicle insurance;
 2 ~~{f}~~~~(e)~~ surety insurance;
 3 ~~{g}~~~~(f)~~ credit life and disability insurance;
 4 ~~{h}~~~~(g)~~ title insurance.
 5 ~~{4}~~--Examination of an applicant for a solicitor's
 6 license shall cover all the kinds of insurance, other than
 7 life, as to which the appointing agent is licensed.
 8 ~~{5}~~~~(7)~~ This section ~~shall~~ does not apply to, and no
 9 such an examination ~~shall~~ be is not required of:
 10 (a) any an individual lawfully licensed as an agent or
 11 solicitor insurance producer as to the kind or kinds of
 12 insurance to be transacted as of or immediately prior to
 13 January 1, 1961, and thereafter continuing to be so
 14 licensed;
 15 (b) any an applicant for license covering the same
 16 kind or kinds of insurance as to which the applicant was
 17 licensed in this state, other than under a temporary
 18 license, within the 12 months next immediately preceding the
 19 date of application unless ~~such previous license was the~~
 20 commissioner has suspended, revoked, or ~~continuation thereof~~
 21 ~~refused by the commissioner to continue the previous~~
 22 license, except that ~~the provisions of~~ this subsection
 23 ~~{5}{b} do~~ (b) does not apply to a title agents insurance
 24 producer, as defined in 33-25-105;
 25 (c) any an applicant for license as nonresident agent;

1 subject to reciprocal arrangements as provided for in this
 2 code insurance producer;
 3 ~~{d}~~--all applicants for license as agent for an insurer
 4 that confines its business in this state substantially to
 5 the insuring of the property, interests, and risks of
 6 farmers, if exempted from examination by the commissioner,
 7 in his discretion, upon written request of the insurer;
 8 ~~{e}~~~~(d)~~ any an applicant for ~~an agent's~~ a license to
 9 sell all-risk federal crop insurance if the applicant
 10 provides certification from an appropriate governmental
 11 agency to the commissioner that he is qualified to sell such
 12 the insurance;
 13 ~~{f}~~~~(e)~~ transportation ticket agents of common carriers
 14 applying for license to solicit and sell only:
 15 (i) accident insurance ticket policies; or
 16 (ii) insurance of personal effects while being carried
 17 as baggage on such a common carrier, as incidental to their
 18 duties as such transportation ticket agents;
 19 ~~{g}~~~~(f)~~ agents' associations an association applying
 20 for license under 33-17-205 33-17-211;
 21 ~~{h}~~~~(g)~~ a mechanical breakdown insurance agents
 22 producer.
 23 (h) an individual who, within 60 days of cancellation
 24 of a license issued by the state of the individual's
 25 residence, files with the commissioner a current letter of

clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and which is not covered under the license held in the other state."

Section 23. Section 33-17-213, MCA, is amended to read:

"33-17-213. Conduct of examinations. (1) The commissioner shall make any examination required under 33-17-212 available to applicants with reasonable frequency and at places in this state reasonably accessible to the applicants.

~~{2}--All the kinds of insurance or classes thereof, as referred to in 33-17-212(3), which the applicant proposes to transact under the license applied for shall be included in the same examination.~~

{3}{2} The commissioner shall assure that the examinations are conducted in a fair and impartial manner and without unfair discrimination as between individuals examined.

{4}{3} The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind

or kinds of insurance.

~~{5}{4}~~ The examination of a title agent insurance producer, as defined in 33-25-105, must include but is not limited to questions pertaining to the search and examination of title to real property, insurance principles relating to title insurance, and the fiduciary duties and procedures of escrows, settlements, and closings of real estate transactions."

Section 24. Section 33-17-214, MCA, is amended to read:

"33-17-214. Issuance of license -- contents -- LAPSE OF LICENSE -- CHANGE OF ADDRESS. (1) The commissioner shall promptly issue the a license applied for to the a person qualified--therefor in accordance with this chapter pursuant to 33-17-211 and 33-17-212. There is a license for life--or disability--insurance--and--a--separate license for kinds of insurance other than life or disability.

(2) The license ~~shall~~ must state the name and address of the licensee, personal identification number, date of ~~issue~~ issuance, general conditions relative to expiration or termination, kind of insurance covered, and such other information as the commissioner considers proper necessary.

(3) The license of a partnership, or corporation, ~~shall~~ or association must also state the name of each individual authorized to exercise the license powers.

~~(4) The license of a solicitor shall state the name and address of the agent to be represented.~~

(4) Each license remains in effect, unless suspended or revoked, as long as the fees required by 33-2-708 are paid.

(5) An individual who allows his license to lapse may, within 12 months from the due date of the unpaid annual fee, apply for the same license without having to pass a written examination if he pays a penalty in the amount of twice the unpaid annual fee.

(6) A person shall inform the commissioner in writing of a change of address within 30 days of the change."

Section 25. Section 33-17-216, MCA, is amended to read:

"33-17-216. Temporary agent licenses insurance producer license -- fee. (1) The commissioner may issue a temporary license ~~as agent~~ to or with respect to an individual qualified ~~therefor~~ for the temporary license only as to age, residence, and trustworthiness and without requiring ~~such the~~ individual to take an examination, in the following cases:

(a) to the surviving spouse or next of kin or to the administrator or executor, or the employee of ~~such the~~ administrator or executor, of a licensed ~~agent~~ insurance producer upon ~~such agent's~~ the insurance producer's death;

(b) to the spouse, next of kin, employee, or legal guardian of a licensed ~~agent~~ insurance producer disabled by injury or physical or mental illness;

(c) to an employee of a ~~firm~~ partnership, or officer or employee of a corporation, licensed as ~~agent~~ an insurance producer, upon the death or disability of an individual designated in the license to exercise the powers ~~thereof~~ of an insurance producer;

(d) to the designee of a licensed ~~agent~~ insurance producer entering upon active service in the armed forces of the United States of America;

(e) in any other circumstance in which the commissioner finds that the public interest will best be served by issuing such a license.

(2) The temporary license ~~shall~~ must be issued upon application filed with the commissioner in ~~such the~~ form and containing ~~such the~~ information as the commissioner may reasonably require and upon payment of the applicable fee as ~~stated~~ provided in 33-2-708.

(3) The temporary license ~~shall~~ must be for a period of not over 90 days, subject to extension by the commissioner in his discretion for an additional period of not more than 90 days, except that ~~such a~~ temporary license issued pursuant to subsection (1)(a) may be continued without payment of an additional fee until the executor or

1 administrator disposes of the insurance business, but not to
 2 exceed a period of 15 months. A temporary license issued to
 3 the next of kin under such subsection (1)(a) may not be
 4 extended for an additional term after the appointment and
 5 qualification of ~~such-an~~ the administrator or executor.

6 (4) The fee paid for the temporary license may be
 7 applied upon the fee required for a permanent license issued
 8 to the licensee upon or prior to expiration of the temporary
 9 license and covering the same kinds of insurance."

10 **Section 26.** Section 33-17-217, MCA, is amended to
 11 read:

12 "33-17-217. Limitations and rights under temporary
 13 license. (1) The commissioner ~~shall~~ may not issue more than
 14 one temporary license, to or with respect to the same
 15 individual to be ~~so~~ licensed, within any 12-month period.

16 (2) The temporary license may cover the same kinds of
 17 insurance for which the ~~agent-thereby~~ insurance producer
 18 being replaced was licensed.

19 (3) As to a temporary ~~agent's~~ insurance producer's
 20 license issued on account of the death or disability of an
 21 agent insurance producer, the licensee may ~~so~~ represent all
 22 of the insurers last represented by ~~such the~~ deceased or
 23 disabled ~~agent-and-without-the-making-of-new-appointment--of~~
 24 ~~such--licensee--by-such-insurers~~ insurance producer, but the
 25 licensee ~~shall~~ may not be appointed--as--to--any--additional

1 ~~insurer--or~~ licensed for an additional kind of insurance
 2 under ~~such-a~~ the temporary license. ~~This-provision-shall-not~~
 3 ~~be-deemed-to-prohibit-termination-of-its-appointment-by--any~~
 4 ~~insurer-~~

5 (4) A temporary licensee ~~shall--have~~ has the same
 6 license powers and duties as under a permanent license."

7 **Section 27.** Section 33-17-221, MCA, is amended to
 8 read:

9 "33-17-221. Licensing insurance vending machines as
 10 ~~solicitors.~~ (1) A licensed resident agent insurance producer
 11 may solicit applications for and issue policies of personal
 12 travel accident insurance by means of mechanical vending
 13 machine machines supervised by him and placed at airports,
 14 railroad stations, bus stations, and similar places where
 15 transportation tickets are sold and of convenience to the
 16 traveling public, if the commissioner finds that:

17 (a) the policy to be sold provides reasonable coverage
 18 and benefits, is reasonably suited for sale and issuance
 19 through a mechanical vending machines machine, and use of
 20 such a mechanical vending machine therefor to sell or issue
 21 a policy in a particular proposed location would be of
 22 material convenience to the public;

23 (b) the type of mechanical vending machine proposed to
 24 be used is reasonably suitable and practical for the
 25 purpose;

(c) reasonable means are provided for informing the prospective purchaser of any ~~such~~ policy of the coverage and restrictions of the policy; and

(d) reasonable means are provided for refund to the applicant or prospective applicant of money inserted in a defective ~~machines~~ mechanical vending machine and for which no insurance or a less amount than that paid for is actually received.

(2) As to each ~~such~~ mechanical vending machine to be ~~so used to sell or issue a policy,~~ the commissioner shall issue to the ~~agent~~ insurance producer a special mechanical vending machine license. The license ~~shall must~~ specify the name and address of the insurer and ~~agent~~ insurance producer, the name of the policy to be ~~so sold or issued~~ through the mechanical vending machine, the serial number of the mechanical vending machine, and the place where the machine ~~is--to--be--in--operation~~ will operate. The license ~~shall-be is~~ subject to annual continuation, expiration, suspension, or revocation coincidentally with that of the ~~agent~~ insurance producer. The commissioner shall also revoke the license ~~as-to-any of a mechanical vending machine as--to~~ which if he finds that the conditions upon which the machine was licensed, as referred to in subsection (1), no longer exist. The license fee ~~shall-be is~~ as stated provided in 33-2-708 for each license year or part ~~thereof of the year~~

for each respective mechanical vending machine. Proof of the existence of a subsisting license ~~shall must~~ be displayed on or about each ~~such~~ mechanical vending machine in use in ~~such~~ the manner as that the commissioner may reasonably require."

Section 28. Section 33-17-301, MCA, is amended to read:

"33-17-301. ~~Adjuster's~~ Adjuster license -- qualifications -- catastrophe adjustments -- public adjuster. (1) ~~No A~~ person ~~shall may not~~ in this state act as or hold himself out to be an adjuster unless ~~then~~ licensed ~~therefor as an adjuster~~ under this chapter. ~~Application A~~ person shall apply for an adjuster license shall-be-made to the commissioner according to forms ~~as--prescribed--and~~ furnished--by-him the commissioner prescribes and furnishes. The commissioner shall issue the adjuster license ~~as~~ to individuals qualified ~~therefor to be licensed as an adjuster~~ upon payment of the license fee ~~stated provided~~ in 33-2-708.

(2) To be licensed as an adjuster, the applicant ~~must be-qualified-therefor-as-follows:~~

(a) must be an individual 18 years of age or more;

(b) must be a resident ~~in-and~~ of Montana or resident of another state ~~which that~~ will permit residents of Montana regularly to act as adjusters in ~~such the~~ other state;

(c) must be a full-time salaried employee of a licensed adjuster or a graduate of a recognized law school

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1 or ~~must~~ have had experience or special education or training
 2 as to the handling of loss claims under insurance contracts
 3 of sufficient duration and extent reasonably to make him
 4 competent to fulfill the responsibilities of an adjuster;

5 (d) must be trustworthy and of good character and
 6 reputation;

7 (e) ~~must~~ shall have and maintain in this state an
 8 office accessible to the public and keep ~~therein~~ in the
 9 office the usual and customary records pertaining to
 10 transactions under the license. This provision ~~shall~~ does
 11 not ~~be deemed to~~ prohibit maintenance of ~~such~~ the office in
 12 the home of the licensee.

13 (3) A firm partnership or corporation, whether or not
 14 organized under the laws of this state, may be licensed as
 15 an adjuster if each individual who is to exercise the
 16 adjuster license powers is separately licensed or is named
 17 in the firm partnership or corporation adjuster license and
 18 is qualified ~~as~~ for an individual adjuster license ~~as~~
 19 adjuster. An additional full license fee ~~shall~~ must be paid
 20 ~~as to~~ for each individual in excess of one ~~so~~ named in the
 21 firm partnership or corporation adjuster license to exercise
 22 its powers.

23 (4) ~~No---such---adjuster's~~ An adjuster license or
 24 qualifications ~~shall be~~ are not required ~~as to---any~~ for an
 25 adjuster who is sent into this state by and on behalf of an

1 insurer or adjusting firm partnership or corporation for the
 2 purpose of investigating or making adjustments of a
 3 particular loss under an insurance policy or for the
 4 adjustment of a series of losses resulting from a
 5 catastrophe common to all ~~such~~ losses.

6 (5) An adjuster license continues in force until
 7 expired, suspended, revoked, or terminated. The license is
 8 subject to annual payment to the commissioner of the renewal
 9 fee required by 33-2-708, accompanied by a written request
 10 for renewal.

11 (6) The commissioner may adopt rules providing for the
 12 examination, licensure, bonding, and regulation of public
 13 adjusters."

14 **Section 29.** Section 33-17-401, MCA, is amended to
 15 read:

16 "33-17-401. Nonresident agent insurance producer --
 17 reciprocity. (1) A nonresident person may apply for a
 18 license if:

19 (a) the person meets the requirements of 33-17-211(2);
 20 (b) the person is licensed in the state of his
 21 residence to act as insurance producer for the kind or kinds
 22 of insurance for which he applies for licensing in this
 23 state; and

24 (c) the person's state of residence issues a similar
 25 license to a resident of this state for the same kind or

1 kinds of insurance for which the person is qualified in this
2 state.

3 (2) The commissioner may license a nonresident
4 individual without written examination if the insurance
5 department in the individual's state of residence certifies
6 that:

7 (a) the individual either has passed a written
8 examination for each kind of insurance applied for or was
9 licensed prior to the time a written examination was
10 required in the individual's state of residence; and

11 (b) is currently licensed and in good standing.

12 (3) The commissioner may issue only a nonresident
13 license to a person, partnership, or corporation otherwise
14 qualified under this code but not a resident of this state
15 and--only--if--pursuant--to--the--laws--of--the--state--of--his
16 residence--a--similar--privilege--is--extended--to--persons
17 resident-in-Montana.

18 (4) If, by the laws or rules of another state, a
19 limitation of rights and privileges, conditions precedent,
20 or any other requirements are imposed upon a resident of
21 this state who is a nonresident licensee of the other state
22 and the limitation, conditions, or requirements are in
23 addition to or in excess of those imposed on nonresident
24 persons under this chapter, the same limitation, conditions,
25 or requirements must be imposed upon the residents of the

1 other state.

2 (5) If a nonresident insurance producer's state of
3 residence suspends, revokes, or terminates his insurance
4 license in that state, his Montana nonresident license
5 automatically terminates and the nonresident insurance
6 producer shall notify the commissioner that his state of
7 residence has suspended, revoked, or terminated his
8 insurance license in that state."

9 **Section 30.** Section 33-17-404, MCA, is amended to
10 read:

11 **"33-17-404.** Countersigning coverage of residents.
12 Except as provided in 33-17-1111, a nonresident ~~agent--shall~~
13 insurance producer may not sign or countersign policies
14 covering subjects of insurance residing, located, or to be
15 performed in Montana."

16 **Section 31.** Section 33-17-405, MCA, is amended to
17 read:

18 **"33-17-405.** Service of process -- commissioner as
19 agent insurance producer. ~~Application-for-and-acceptance-of~~
20 ~~a--license--as--a--nonresident--agent--shall--constitute~~
21 ~~irrevocable--appointment--of--the--commissioner--as--the~~
22 ~~attorney-in-fact-of--said--licensee--to--accept--service--of~~
23 ~~process--issued--in--Montana--in--any--action--or--proceeding~~
24 ~~against-the-licensee-arising-out-of-the-licensing-or-out-of~~
25 ~~transactions--under-the-license--All-process-shall-be-served~~

1 in-duplicate-upon-the-commissioner-together-with--a--fee--of
 2 \$5--The--commissioner-shall-then-promptly-forward-a-copy-of
 3 the-service-by-registered-or-certified-mail-to-the--licensee
 4 at--his--last--known-address--Such-service-shall-constitute
 5 personal-service-upon-the--licensee- A nonresident person
 6 shall file with the commissioner the required forms
 7 appointing the commissioner and his successors in office as
 8 the nonresident person's agent upon whom process in a legal
 9 proceeding against the nonresident person may be served and
 10 shall agree that such process has the same legal force and
 11 validity as personal service of process upon the nonresident
 12 person. The commissioner shall, within 3 working days after
 13 receiving process, forward, at the nonresident person's
 14 address of record, a copy of the process by certified mail
 15 to the person for whom he has received the process."

16 **Section 32.** Section 33-17-406, MCA, is amended to
 17 read:

18 "33-17-406. Nonresident agent insurance producer
 19 subject to insurance code. ~~All A nonresident licensees shall~~
 20 be insurance producer is subject to the provisions of the
 21 Montana Insurance Code as though a resident of this state,
 22 unless otherwise provided."

23 **Section 33.** Section 33-17-407, MCA, is amended to
 24 read:

25 "33-17-407. Nonresident licensee insurance producer to

1 pay taxes -- annual report required. (1) A nonresident
 2 licensee insurance producer is subject to personal income,
 3 business income, or corporate license taxes for all income
 4 earned on insurance policies issued to cover subjects or
 5 risks residing, located, or to be performed in Montana and
 6 written within the boundaries of this state.

7 (2) A nonresident licensee insurance producer shall
 8 make-a-written-report--to--the--commissioner file annually
 9 within--45-days-following-the-end-of-each-calendar-year--The
 10 report-must-contain-a-listing-of--all--business--written--on
 11 subjects--or--risks--located--or--performed--in-Montana--The
 12 report-must-be-in-a-form-prescribed-by-the-commissioner--and
 13 must--include--but--not--be-limited-to-a-listing-of-company,
 14 policy-number--premium--earned--and--commission--earned a
 15 Montana income tax return as required in Title 15."

16 **Section 34.** Section 33-17-411, MCA, is amended to
 17 read:

18 "33-17-411. Penalty. A nonresident licensee insurance
 19 producer who violates any a condition of his Montana license
 20 or any a provision of this part is subject to a fine by the
 21 commissioner of up to \$50,000 for each such violation and
 22 may, at the discretion of the commissioner, have his Montana
 23 nonresident license revoked or suspended for a period of up
 24 to 5 years."

25 **Section 35.** Section 33-17-502, MCA, is amended to

1 read:

2 "33-17-502. Prohibition on holding out as consultant
3 -- receiving fee. (1) Any A person not licensed as an
4 insurance consultant in this state who identifies or holds
5 himself out to be an insurance consultant without having
6 been licensed as an insurance consultant under this part or
7 ~~any a~~ person who uses any other designation or title ~~which~~
8 that is likely to mislead the public and holds himself out
9 in any manner as having particular insurance qualifications
10 other than those for which he may be otherwise licensed or
11 otherwise qualified is guilty of a misdemeanor and upon
12 conviction shall be fined \$1,500.

13 (2) Any A person not licensed as an insurance
14 consultant with respect to the relevant kinds of insurance
15 who receives ~~any a~~ fee for examining, appraising, reviewing,
16 or evaluating any insurance policy, annuity or pension
17 contract, plan, or program or who ~~shall--make~~ makes
18 recommendations or ~~give gives~~ advice with regard to any of
19 the above without first having been licensed by the
20 commissioner as an insurance consultant is guilty of a
21 misdemeanor and upon conviction shall be fined \$1,500.

22 (3) Nothing in this part applies to:

23 (a) licensed attorneys at law in this state acting in
24 their professional capacity;

25 (b) an actuary or a certified public accountant who

1 provides information, recommendations, advice, or services
2 in his professional capacity if neither he nor his employer
3 receives any compensation directly or indirectly on account
4 of any insurance, bond, annuity or pension contract that
5 results in whole or part from that information,
6 recommendation, advice, or services; or

7 (c) a ~~duty~~ licensed casualty insurance ~~agent~~ producer
8 who accepts a fee from an insured for placement through the
9 state compensation insurance fund as provided in 33-18-212."

10 **Section 36.** Section 33-17-503, MCA, is amended to
11 read:

12 "33-17-503. Application -- fee -- expiration. (1)
13 Before ~~an-insurance-consultant's~~ a consultant license is
14 issued or renewed, the prospective licensee shall:

15 (a) properly file in the office of the commissioner a
16 written application on forms the commissioner prescribes;
17 and

18 (b) pay a fee of \$50.

19 (2) ~~Every--consultant's~~ Each consultant license ~~shall~~
20 expire expires on May 31 next following the date of issue."

21 **Section 37.** Section 33-17-504, MCA, is amended to
22 read:

23 "33-17-504. Issuing license -- limitations. The
24 commissioner may issue ~~an--insurance--consultant's~~ a
25 consultant license to ~~any-natural-person~~ an individual who

1 has complied with the requirements of this chapter with
 2 respect to either life insurance, meaning all of those kinds
 3 of insurance authorized in 33-1-207, 33-1-208, 33-20-1001,
 4 33-21-103, 33-22-501, and 33-22-601, or general insurance,
 5 meaning all of those kinds of insurance authorized in
 6 33-1-206, 33-1-207, 33-1-209 through 33-1-212, and 33-1-221
 7 through 33-1-229, as specified in such the license."

8 **Section 38.** Section 33-17-505, MCA, is amended to
 9 read:

10 "33-17-505. Qualification -- fee. (1) In order to
 11 determine the competency of every an applicant for a
 12 consultant license ~~as---an---insurance--consultant~~, the
 13 commissioner shall require the applicant to pass an
 14 examination.

15 (2) The fee for taking ~~such-an~~ the consultant license
 16 examination ~~shall-be~~ is \$50. The commissioner shall deposit
 17 all fees collected in the general fund. The fee for taking a
 18 second or subsequent examination ~~shall~~ may be no more than
 19 the cost of administering ~~such the~~ examination, not to
 20 exceed \$50."

21 **Section 39.** Section 33-17-506, MCA, is amended to
 22 read:

23 "33-17-506. Grounds for refusal to issue license. The
 24 commissioner may refuse to issue ~~an-insurance-consultant's a~~
 25 consultant license if, in his judgment, the applicant is not

1 trustworthy and competent to act as a consultant, or has
 2 given cause for revocation or suspension of a license, or
 3 has failed to comply with any prerequisite for the issuance
 4 of a license."

5 **Section 40.** Section 33-17-507, MCA, is amended to
 6 read:

7 "33-17-507. Revocation. The commissioner may revoke or
 8 suspend ~~any-insurance-consultant's a consultant~~ license for
 9 a period he determines if, after notice and hearing as
 10 specified in this chapter, he determines that the licensee:

11 (1) has violated any provision of or any obligation
 12 imposed by the insurance law or has violated any law in the
 13 course of his dealings as ~~a an insurance~~ consultant;

14 (2) has made a material misstatement in application
 15 for a ~~consultant's consultant~~ license;

16 (3) has been guilty of fraudulent or dishonest
 17 practices; or

18 (4) has demonstrated his incompetency or
 19 untrustworthiness to act as an insurance consultant."

20 **Section 41.** Section 33-17-511, MCA, is amended to
 21 read:

22 "33-17-511. Consideration for services only on written
 23 memorandum. No ~~A~~ person licensed as an insurance consultant
 24 under this part may not receive ~~any a~~ fee for examining,
 25 appraising, reviewing, or evaluating ~~any an~~ insurance

1 policy, bond, annuity or pension or profit-sharing contract,
 2 plan, or program or for making recommendations or giving
 3 advice with regard to any of the above unless the
 4 compensation is based upon a written memorandum signed by
 5 the party to be charged and specifying or clearly defining
 6 the amount or extent of the compensation. A An insurance
 7 consultant shall retain a copy of every memorandum or
 8 contract shall-be-retained-by-the-licensee for not less than
 9 3 years after those services have been fully performed."

10 **Section 42.** Section 33-17-512, MCA, is amended to
 11 read:

12 "33-17-512. Limitation on type of consideration. No A
 13 person licensed as an insurance consultant may not receive
 14 any compensation, direct or indirect, as a result of the
 15 sale of insurance or annuities to or the use of securities
 16 or trusts in connection with pensions for any a person to
 17 whom any the licensee has performed any a related consulting
 18 service for which he has received a fee or contracted to
 19 receive a fee within the preceding 12 months."

20 **Section 43.** Section 33-17-513, MCA, is amended to
 21 read:

22 "33-17-513. Restrictions on insurers recommended by
 23 licensee. No A person licensed as an insurance consultant
 24 under this part may not recommend or encourage the purchase
 25 of insurance, annuities, or securities from any an

1 authorized insurer in which he or any member of his
 2 immediate family holds an executive position or holds a
 3 substantial interest."

4 **Section 44.** Section 33-17-602, MCA, is amended to
 5 read:

6 "33-17-602. Written agreement required. (1) No A
 7 person may not act as an administrator without a written
 8 agreement between the person and the insurer. The written
 9 agreement shall must be retained as part of the official
 10 records of both the administrator and the insurer for the
 11 duration of the agreement and for 5 years thereafter. The
 12 written agreement shall must contain provisions which that
 13 include the requirements of 33-17-612 through 33-17-617
 14 insofar as these requirements relate to the functions
 15 performed by the administrator.

16 (2) The agreement shall must contain a provision with
 17 respect to the underwriting or other standards pertaining to
 18 the business underwritten by such the insurer.

19 (3) Whenever a policy is issued to a trustee, a copy
 20 of the trust agreement and any amendments thereto-shall to
 21 it must be furnished to the insurer by the administrator and
 22 shall be retained as part of the official records of both
 23 the administrator and the insurer for the duration of the
 24 policy and for 5 years thereafter."

25 **Section 45.** Section 33-17-603, MCA, is amended to

1 read:

2 "33-17-603. Certificate of registration. (1) Except as
3 provided in 33-17-604, no a person may not act as or hold
4 himself out to be an administrator in this state unless he
5 holds a certificate of registration as an administrator.

6 (2) An application for a certificate of registration
7 must be accompanied by a fee of \$100. The commissioner of
8 ~~insurance~~ shall issue the certificate unless he finds that
9 the applicant is not competent, trustworthy, financially
10 responsible, or of good personal and business reputation or
11 that the applicant has had a previous application for ~~an~~
12 ~~insurance a~~ license denied for cause within 5 years.

13 (3) The certificate of registration is renewable
14 annually on the date of issue. A request for renewal must be
15 accompanied by a renewal fee of \$100.

16 (4) The certificate of registration may be suspended
17 or revoked if, after notice and hearing, the commissioner
18 finds that the administrator has violated any of the
19 requirements of this part or that the administrator is not
20 competent, trustworthy, financially responsible, or of good
21 personal and business reputation.

22 (5) Unless the certification requirement is waived,
23 any-administrator a person who acts as such an administrator
24 without the a certificate of registration is subject to a
25 fine of not less than \$500 or more than \$1,500."

1 **Section 46.** Section 33-17-604, MCA, is amended to
2 read:

3 "33-17-604. Waiver of certification requirements. The
4 commissioner of--insurance may waive the requirements of
5 33-17-603 for any person or class of persons. The factors
6 taken into account in granting such a waiver ~~shall~~ include
7 but are not limited to:

8 (1) whether the person acting as an administrator is
9 primarily in a business other than that of administrator;

10 (2) whether the financial strength and history of the
11 organization indicates stability in its continuity of doing
12 business;

13 (3) whether the regular duties being performed as an
14 administrator are such that the covered persons are not
15 likely to be injured by a waiver of such the requirements."

16 **Section 47.** Section 33-17-611, MCA, is amended to
17 read:

18 "33-17-611. Maintenance of information. For the
19 duration of the agreement required by 33-17-602 and for 5
20 years thereafter, each administrator shall maintain at its
21 principal administrative office adequate books and records
22 of all transactions between the administrator, insurers, and
23 insured persons. These books and records ~~shall~~ must be
24 maintained in accordance with prudent standards of insurance
25 recordkeeping. The commissioner of--insurance shall have

1 access to these books and records for examination, audit, or
 2 inspection. Any trade secrets contained in the books and
 3 records, including but not limited to the identity and
 4 addresses of policyholders and certificate holders, ~~shall be~~
 5 are confidential, except that the commissioner may use ~~such~~
 6 the information in any proceedings instituted against the
 7 administrator. The insurer retains the right to continuing
 8 access to those books and records of the administrator
 9 sufficient to permit the insurer to fulfill all of its
 10 contractual obligations to insured persons, subject to any
 11 restrictions in the written agreement between the insurer
 12 and the administrator."

13 **Section 48.** Section 33-17-613, MCA, is amended to
 14 read:

15 "33-17-613. Collection of charges and premiums. (1)
 16 All insurance charges or premiums collected by an
 17 administrator on behalf of or for an insurer ~~or-insurers~~ and
 18 return premiums received from ~~such the~~ insurer ~~or-insurers~~
 19 are held by the administrator in a fiduciary capacity.
 20 These funds ~~shall must~~ be immediately remitted to the person
 21 ~~or--persons~~ entitled ~~thereto to them~~ or ~~shall must~~ be
 22 deposited promptly in a fiduciary bank account established
 23 and maintained by the administrator. If deposited charges or
 24 premiums were collected on behalf of or for more than one
 25 insurer, the administrator shall require the bank in which

1 the fiduciary account is maintained to keep records clearly
 2 recording the deposits in and withdrawals from ~~such the~~
 3 account on behalf of or for each insurer. The administrator
 4 shall promptly obtain and keep copies of all these records
 5 and, upon request of an insurer, shall furnish the insurer
 6 with copies of the records pertaining to deposits and
 7 withdrawals on behalf of or for the insurer.

8 (2) The administrator ~~shall may~~ not pay any a claim by
 9 withdrawals from the fiduciary account. Withdrawals from the
 10 fiduciary account ~~shall must~~ be made, as provided in the
 11 written agreement between the administrator and the insurer,
 12 for:

13 (a) remittance to an insurer entitled ~~thereto to the~~
 14 remittance;

15 (b) deposit in an account maintained in the name of
 16 ~~such the~~ insurer;

17 (c) transfer to and deposit in a claims paying
 18 account, with claims to be paid as provided in 33-17-615;

19 (d) payment to a group policyholder for remittance to
 20 the insurer entitled ~~thereto to the~~ payment;

21 (e) payment to the administrator of its commission,
 22 fees, or charges; or

23 (f) remittance of return premiums to the person or
 24 ~~persons~~ entitled ~~thereto to the~~ premium."

25 **Section 49.** Section 33-17-1001, MCA, is amended to

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1 read:

2 "33-17-1001. Suspension, revocation, or refusal of
3 license. (1) Except as provided in 33-17-411, the
4 commissioner may suspend for not more than 12 months, or may
5 revoke or refuse to continue any, or may deny an application
6 for a license issued under this chapter or any surplus lines
7 agent insurance producer license if, after hearing held on
8 not less than 10 days' advance notice by certified mail of
9 such the hearing and of the charges against the licensee
10 given as provided in 33-1-314(3) to the licensee and-to--the
11 insurers--represented--as-to-an-agent--or--to-the-appointing
12 agent--as-to-a-solicitor, he finds that as-to the licensee
13 any--one--or-more-of-the-following-causes-exist or applicant
14 has:

15 (a) for-any-cause engaged or is about to engage in an
16 act or practice for which issuance of the license could have
17 been refused had it then existed and been known to the
18 commissioner;

19 (b) for-obtaining obtained or attempting attempted to
20 obtain any--such a license through misrepresentation or
21 fraud;

22 (c) for-violation--of--or--noncompliance violated or
23 failed to comply with any-applicable a provision of this
24 code or for-willful-violation-of-any-lawful has violated a
25 rule, subpoena, or order of the commissioner or of the

1 commissioner of any OTHER state;

2 (d) for--misappropriation--or--conversion improperly
3 withheld, misappropriated, or converted to his own use or
4 illegal-withholding-of-moneys money or property belonging to
5 policyholders, insurers, beneficiaries, or others and
6 received in conduct of business under the license;

7 (e) conviction--by-final-judgment-- been convicted of a
8 felony involving-moral-turpitude;

9 (f) if in the conduct of his affairs under the
10 license, the-licensee--has used fraudulent, coercive, or
11 dishonest practices or has shown himself to be incompetent,
12 untrustworthy, financially irresponsible, or a source of
13 injury and loss to the public;

14 (g) made a materially untrue statement in the license
15 application;

16 (h) misrepresented the terms of an actual or proposed
17 insurance contract;

18 (i) been found guilty of an unfair trade practice or
19 fraud prohibited by Title 33, in chapter 18;

20 (j) had his license suspended or revoked in any other
21 state;

22 (k) forged another's name to an application for
23 insurance;

24 (l) cheated on an examination for a license; or

25 (m) knowingly accepted insurance business from a

1 person who is not licensed.

2 (2) The license of a partnership or corporation may be
3 suspended, revoked, or refused, ~~also for any of such causes~~
4 ~~as relate to any~~ or denied if a reason listed in subsection
5 (1) applies to an individual designated in the license to
6 exercise its powers.

7 (3) The commissioner may suspend, revoke, or refuse to
8 continue a license under subsection (1)(e) without
9 conducting an investigation pursuant to 37-1-203 or making a
10 written finding pursuant to 37-1-204."

11 **Section 50.** Section 33-17-1002, MCA, is amended to
12 read:

13 "33-17-1002. Procedure following suspension or
14 revocation. (1) Upon suspension or revocation of any such a
15 license, the commissioner shall forthwith immediately notify
16 the licensee thereof of the suspension or revocation either
17 in person or by mail addressed to the licensee at his
18 address last of record with the commissioner. Notice by mail
19 shall be deemed is effectuated when so the notice is mailed.
20 ~~The commissioner shall give like notice to the insurers~~
21 ~~represented by the agent, in the case of an agent's license,~~
22 ~~and to the agent by whom appointed, in the case of a~~
23 ~~solicitor's license.~~

24 ~~(2) Suspension or revocation of the license of an~~
25 ~~agent shall automatically revoke or suspend the licenses of~~

1 ~~all solicitors appointed by him.~~

2 ~~(3)~~ (2) The commissioner ~~shall~~ may not again issue a
3 license under this code to ~~or as to any~~ a person whose
4 license has been revoked until after expiration of 1 year
5 and thereafter not until such the person again qualifies
6 therefor for a license in accordance with ~~the applicable~~
7 ~~provisions of~~ this code. If the commissioner revokes a
8 person's license, the commissioner may refuse to issue a
9 license to the person for up to 5 years after the
10 revocation. A person whose license has been revoked twice
11 ~~shall~~ is not again be eligible for any license under this
12 code.

13 ~~(4)~~ (3) If the license of a partnership or corporation
14 is ~~so~~ suspended or revoked, no member of such the
15 partnership or officer or director of such the corporation
16 ~~shall~~ may be licensed or be designated in any a license to
17 exercise the its powers thereof during the period of such
18 the suspension or revocation unless the commissioner
19 determines upon substantial evidence that such the member,
20 officer, or director was not personally at fault and did not
21 acquiesce in the matter on account of which the license was
22 suspended or revoked."

23 **Section 51.** Section 33-17-1003, MCA, is amended to
24 read:

25 "33-17-1003. Return of license. (1) All licenses

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1 issued under this chapter, although issued and delivered to
 2 the licensee ~~agent,--solicitor,~~ insurance producer or
 3 adjuster,--~~shall~~ are at all times be the property of the
 4 state of Montana. Upon any expiration, termination,
 5 suspension, or revocation of the license, the licensee or
 6 other person having possession or custody of the license
 7 shall ~~forthwith~~ immediately deliver it to the commissioner
 8 either by personal delivery or by mail.

9 (2) As to any license lost, stolen, or destroyed while
 10 in the possession of ~~any--such a~~ licensee or person, the
 11 commissioner may accept in lieu of return of the license the
 12 affidavit of the licensee or other person responsible for or
 13 involved in the safekeeping of ~~such the~~ license, concerning
 14 the facts of ~~such the~~ loss, theft, or destruction."

15 **Section 52.** Section 33-17-1004, MCA, is amended to
 16 read:

17 "33-17-1004. Acting as insurance ~~agent,--solicitor,~~
 18 producer or adjuster without license -- penalty. Except as
 19 provided in 33-17-411, a person,--~~partnership,--association,~~
 20 ~~or--corporation~~ who ~~or--which~~, in this state, acts as an
 21 insurance ~~agent,--solicitor,~~ producer or adjuster without
 22 having authority to do so by virtue of a license issued and
 23 in force pursuant to ~~the--provisions--of~~ this chapter is
 24 guilty of a misdemeanor and upon conviction shall be fined
 25 \$500 or imprisoned in the county jail for 90 days, or both."

1 **Section 53.** Section 33-17-1101, MCA, is amended to
 2 read:

3 "33-17-1101. Place of business -- display of license
 4 -- records. (1) Every resident ~~agent~~ insurance producer
 5 shall have and maintain a place of business in this state
 6 accessible to the public. A nonresident ~~agent~~ insurance
 7 producer may maintain a place of business in this state. An
 8 ~~agent's~~ insurance producer's place of business must be that
 9 wherein a place in which he principally conducts
 10 transactions under his license. The street address of ~~such~~
 11 ~~the place shall~~ must appear upon the license,--~~and the~~
 12 ~~licensee shall--promptly--notify--the--commissioner--of--any~~
 13 ~~change--in--his--street--or--mailing--address.~~ Nothing in this
 14 section prohibits maintenance of ~~such the~~ place of business
 15 in the licensee's place of residence.

16 (2) The license ~~of--the--licensee--and--the--license--of~~
 17 ~~each--solicitor--appointed--by--and--representing--the--licensee~~
 18 must be conspicuously displayed in ~~such the~~ place of
 19 business at the street address shown on the license in a
 20 part thereof of the place of business customarily open to
 21 the public.

22 (3) The ~~agent~~ insurance producer shall keep at his
 23 place of business complete records pertaining to
 24 transactions under his license ~~and--the--licenses--of--his~~
 25 ~~solicitors,~~ for a period of at least 3 years after

1 completion of the respective transactions, except that a
2 title agents insurance producer, as defined in 33-25-105,
3 shall retain records as provided in 33-25-214 and
4 33-25-216."

5 **Section 54.** Section 33-17-1102, MCA, is amended to
6 read:

7 "33-17-1102. Reporting and accounting for premiums --
8 misappropriation. (1) All insurance premiums or return
9 premiums received by an agent--or--solicitor insurance
10 producer must be held in a separate trust account. The
11 licensee insurance producer shall at all times act in a
12 fiduciary capacity, and the agent-or-solicitor shall, in the
13 applicable regular course of business, account for and pay
14 the same insurance premiums or return premiums he receives
15 to the insured, insurer, or agent insurance producer
16 entitled thereto to them. Except for a title agent
17 insurance producer as defined in 33-25-105, an agent
18 insurance producer may deposit and commingle in the same
19 such separate deposit all such funds belonging to others so
20 long as the amount of such the deposit so held for each
21 respective other person is reasonably ascertainable from the
22 records and accounts of the licensee.

23 (2) Any agent--or--solicitor insurance producer not
24 lawfully entitled thereto to the funds may not divert or
25 appropriate such the funds or any portion thereof of the

1 funds to his own use.

2 (3) An insurance producer who unlawfully diverts or
3 appropriates insurance premiums or return premiums to his
4 own use is, upon conviction, guilty of theft and is
5 punishable as provided by law."

6 **Section 55.** Section 33-17-1103, MCA, is amended to
7 read:

8 "33-17-1103. Exchange-of-business---sharing Accepting
9 and paying commissions, fees, or consideration --
10 restriction. {1}--An--agent--may--under--rules--adopted--by--the
11 commissioner--place--an--insurance--coverage--with--an--insurer--as
12 to--which--he--is--not--then--licensed--or--appointed--as--an--agent--
13 and--the--insurer--shall--accept--such--business--only--when--placed
14 through--an--agent--licensed--under--this--chapter--and--appointed
15 by--the--insurer--Both--agents--involved--in--such--an--exchange--of
16 business--must--be--licensed--as--to--all--of--the--kinds--of
17 insurance--represented--by--the--coverage--so--placed--

18 {2}--The--agents--involved--in--a--lawful--exchange--of
19 business--under--subsection--{1}--above--may--divide--between--them
20 the--commission--or--compensation--payable--on--account--of--such
21 coverage. (1) An insurer or insurance producer may not pay,
22 directly or indirectly, a commission, service fee, brokerage
23 fee, or other valuable consideration to a person for
24 services as an insurance producer unless the person
25 performing the service holds a valid license with regard to

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1 the kind or kinds of insurance for which the service was
 2 rendered at the time the service was performed. A person not
 3 properly licensed in accordance with this chapter at the
 4 time he performs the service as an insurance producer may
 5 not accept a commission, service fee, brokerage fee, or
 6 other valuable consideration for the service. This section
 7 does not prevent payment or receipt of renewal or other
 8 deferred commissions to or by a person entitled to receive
 9 the payment under this section.

10 ~~(3)~~(2) ~~No---agent--or--solicitor--shall~~ An insurance
 11 producer may not directly or indirectly share his
 12 commissions or other compensation received or to be received
 13 by him on account of a transaction under his license with
 14 any person not also licensed under this chapter as to the
 15 same kind or kinds of insurance involved in such the
 16 transactions, except as provided in 33-17-1113. This
 17 provision ~~shall~~ does not affect payment of the regular
 18 salaries due employees of the licensee, or the distribution
 19 in regular course of business of compensation and profits
 20 among members or stockholders if the licensee is a firm
 21 partnership or corporation, or use of funds for family or
 22 personal purposes.

23 ~~(4)~~(3) This section does not apply as to those
 24 transactions with surplus lines ~~agents--which~~ insurance
 25 producers that are lawful under 33-2-306 ~~or as--to--life--or~~

1 ~~disability--insurance-placed-as-provided-in-33-17-1104 OR-AS~~
 2 ~~TO-LIFE--OR--DISABILITY--INSURANCE--PLACED--AS--PROVIDED--IN~~
 3 ~~33-17-1104."~~

4 **Section 56.** Section 33-17-1111, MCA, is amended to
 5 read:

6 "33-17-1111. Resident agent insurance producer
 7 required -- reciprocity -- countersignature -- records. (1)
 8 No An authorized insurer ~~shall~~ may not issue a policy
 9 covering a subject of insurance resident residing, located,
 10 or to be performed in Montana unless:

11 (a) the policy is written through a licensed agent,
 12 resident insurance producer residing in Montana, ~~of the~~
 13 insurer;

14 (b) the policy is written through a licensed
 15 nonresident agent insurance producer and, if a
 16 countersignature would be required by the resident state of
 17 the nonresident agent insurance producer upon a Montana
 18 resident agent insurance producer writing business in the
 19 resident state of such the nonresident agent insurance
 20 producer, the policy or countersignature endorsement
 21 attached thereto to the policy is countersigned by a Montana
 22 resident licensed agent insurance producer; or

23 (c) the policy is written through a licensed
 24 nonresident agent insurance producer who is a resident of a
 25 state that does not require countersignatures.

1 (2) ~~No--such~~ A countersignature ~~shall~~ may not be made
 2 in blank. The agent insurance producer may by express
 3 written authorization given in advance delegate to his
 4 salaried clerical employee the power to ~~so~~ countersign in
 5 the name of the ~~agent--such--contracts~~ insurance producer
 6 those policies or classes of ~~contracts--as--are~~ policies
 7 designated in ~~such~~ the authorization ~~so--long--as~~ if the
 8 initials of ~~such~~ the employee are written below the agent's
 9 insurance producer's name on ~~such~~ the countersignature, but
 10 the ~~agent--shall~~ insurance producer may not thereby delegate
 11 or have power to delegate to ~~any--other~~ a person the power or
 12 authority to bind an insurer with respect to ~~any~~ a risk not
 13 already bound by the agent insurance producer or other
 14 person having clear authority from the insurer ~~so~~ to bind.
 15 The ~~agent--shall--be~~ insurance producer is responsible for all
 16 of the acts of ~~such~~ the employee within the scope of the
 17 authority ~~so~~ delegated. The agent insurance producer shall
 18 keep a record of ~~each--and~~ all coverages countersigned by him
 19 or by his authority.

20 (3) This section ~~shall~~ does not apply to:

21 (a) reinsurance;

22 (b) life insurance, disability insurance, or annuity
 23 contracts;

24 (c) insurance of the rolling stock, vessels, or
 25 aircraft of any common carrier in interstate or foreign

1 commerce or of any vehicle principally garaged and used in
 2 another state or covering any liability or other risks
 3 incident to the ownership, maintenance, or operation ~~thereof~~
 4 of any common carrier or vehicle;

5 (d) insurance of property in course of transportation
 6 interstate or in foreign trade or any liability or risk
 7 incident ~~thereto~~ to the insurance;

8 (e) insurance of wet marine and transportation risks;

9 (f) countersignature to policies issued through agents
 10 insurance producers compensated only by salary or issued by
 11 insurers not using agents insurance producers in the general
 12 solicitation of business;

13 (g) bid bonds, as required under Title 18, chapter 1,
 14 part 2.

15 (4) Violation of this section ~~shall~~ does not
 16 invalidate ~~any--contract~~ a policy otherwise valid as between
 17 the insurer and the insured."

18 **Section 57.** Section 33-17-1112, MCA, is amended to
 19 read:

20 "33-17-1112. Salaried personnel not to countersign --
 21 exception for emergencies. (1) With respect to policies
 22 subject to countersignature requirements under 33-17-1111,
 23 only a licensed ~~agent--of--the--insurer--resident~~ insurance
 24 producer residing in Montana, whose compensation as ~~such~~
 25 agent an insurance producer is by commission computed as a

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1 percentage of the premium received on each ~~such~~ policy
 2 written, ~~shall-have~~ has power to countersign as required by
 3 33-17-1111.

4 (2) No A branch manager, state agent, special agent,
 5 general or any other like supervisory agent, or any other
 6 representative of the insurer, whose compensation ~~therefrom~~
 7 from the insurer is in whole or in part by salary, ~~shall~~
 8 does not have power to countersign ~~such~~ policies or
 9 countersignature endorsements ~~thereto~~ to policies; except
 10 that in an emergency where it is necessary that an insurance
 11 policy be issued without delay and no resident ~~agent-of-the~~
 12 insurer insurance producer having power to execute the
 13 policy is then reasonably available, then any other
 14 individual having authority ~~therefor~~ from the insurer may
 15 execute ~~such~~ the policy in the first instance in order to
 16 make a contract between the insurer and the obligee or the
 17 insured if ~~such~~ the policy is subsequently countersigned in
 18 fact by ~~such~~ a resident agent insurance producer."

19 **Section 58.** Section 33-17-1113, MCA, is amended to
 20 read:

21 "33-17-1113. Policies originating outside state --
 22 commission of resident agent insurance producer. (1) As to
 23 policies a policy or endorsements--~~thereto--which-are an~~
 24 endorsement to a policy that is subject to countersignature
 25 requirements under 33-17-1111 contracted for or otherwise

1 originating outside the boundaries of Montana, ~~there--shall~~
 2 ~~be-payable-to-the-countersigning-agent--resident-in-Montana,~~
 3 a commission ~~which--shall~~ of not be less than 5% of the
 4 premium charged and received but not ~~to-exceed~~ more than 50%
 5 of the commission paid by the insurer is payable to the
 6 countersigning insurance producer, so that a record within
 7 Montana will be kept of ~~such~~ the business and so that the
 8 state may better receive any tax required by law to be paid
 9 with respect to ~~such~~ the insurance. If, however, the
 10 originating ~~agent--or--broker~~ insurance producer or the
 11 insurer desires additional service to be rendered during the
 12 term of the policy, then the compensation for ~~such~~ the
 13 countersigning resident ~~agent--shall~~ insurance producer must
 14 be in ~~such~~ an additional amount as is fixed by mutual
 15 agreement of ~~such~~ the parties in interest.

16 (2) If pursuant to the laws of another state the
 17 countersigning agents insurance producers of that state
 18 retain as commission or compensation with respect to
 19 business originated by Montana agents insurance producers
 20 more than 5% of the premium, then the Montana agents
 21 insurance producers who countersign policies representing
 22 business originated by ~~agents-or-brokers~~ insurance producers
 23 of ~~such~~ the other state shall charge and receive a
 24 commission in an amount not less than that ~~so~~ received by
 25 countersigning agents insurance producers of the other

1 state."

2 **Section 59.** Section 33-17-1114, MCA, is amended to
3 read:

4 "33-17-1114. Policies issued at home or branch
5 offices. Nothing in 33-17-1111 through 33-17-1113 shall
6 prevent--any prevents an insurer from issuing any a policy,
7 as to which the resident---agent---or countersignature
8 requirement of 33-17-1111 is-applicable applies, at its home
9 or branch office, but such-policies-shall the policy must be
10 subsequently countersigned, where otherwise required, by its
11 agent--resident an insurance producer residing in Montana.
12 The insurer's-licensed--agent--resident insurance producer
13 residing in Montana shall receive the commission on such the
14 policy when the insurance premium is paid. This section does
15 not apply as to life insurance."

16 **Section 58.**--Section--33-18-401,--MCA,--is--amended--to
17 read:

18 "33-18-401.---False--applications,--claims--application,
19 claim,--and--proofs--proof-of-loss---penalty. Any-solicitor,
20 agent--An-insurance-producer, examining-physician, applicant,
21 or-other-person-who-knowingly-or-willfully-makes-any-a-false
22 or--fraudulent--statement--or--representation--in--or---with
23 reference--to--any--an-application-for-insurance-or, for-the
24 purpose-of-obtaining-any-money--or--benefit,--knowingly--or
25 willfully--presents--or--causes--to--be-presented-a-false-or

1 fraudulent-claim-or-any-proof-in-support-of-such-a-claim-for
2 the-payment-of-the-loss-upon--a--contract--of--insurance--or
3 prepares,---makes,--or--subscribes--a--false--or--fraudulent
4 account,--certificate,--affidavit-or-proof-of-loss,--or--other
5 document--or--writing,--with--intent--that--the--same-may-be
6 presented-or-used-in-support-of-such-a-claim,--shall--be--is
7 guilty--of-a-misdemeanor--felony-and-upon-conviction-shall-be
8 punished-by-a-fine-of-not-less-than-\$250-or-fined--not--more
9 than-\$1,000-\$5,000-or-by-imprisonment-in-the-county-jail-for
10 not--less-than-3-months-or-imprisoned-not-more-than-6-months
11 10--years,--or--both--such--fine--and--imprisonment--at--the
12 discretion-of-the-court."

13 **SECTION 60.** SECTION 33-18-401, MCA, IS AMENDED TO
14 READ:

15 "33-18-401. False applications,--claims application,
16 claim, and proofs proof of loss -- criminal penalty. (1) Any
17 solicitor, agent An insurance producer, examining physician,
18 applicant, or other person who knowingly or willfully makes
19 any a false or fraudulent statement or representation in or
20 with reference to any an application for insurance or, for
21 the-purpose-of-obtaining-any-money-or-benefit, knowingly--or
22 willfully--presents--or--causes--to--be-presented-a-false-or
23 fraudulent-claim-or-any-proof-in-support-of-such-a-claim-for
24 the-payment-of-the-loss-upon--a--contract--of--insurance--or
25 prepares,---makes,--or--subscribes--a--false--or--fraudulent

1 ~~account, certificate, affidavit or proof of loss, or other~~
 2 ~~document or writing, with intent that the same may be~~
 3 ~~presented or used in support of such a claim, shall be~~ is
 4 guilty of a misdemeanor and upon conviction shall be
 5 punished by a fine of not less than \$250 or more than \$1,000
 6 or by imprisonment in the county jail for not less than 3
 7 months or more than 6 months or both such fine and
 8 imprisonment at the discretion of the court.

9 (2) An insurance producer, examining physician,
 10 applicant, or other person who, for the purpose of obtaining
 11 any money or benefit, knowingly or willfully presents or
 12 causes to be presented a false or fraudulent claim or any
 13 proof in support of such a claim for the payment of the loss
 14 upon a contract of insurance or prepares, makes, or
 15 subscribes a false or fraudulent account, certificate,
 16 affidavit or proof of loss, or other document or writing,
 17 with intent that the same may be presented or used in
 18 support of such a claim, is guilty of a crime under
 19 45-6-301, and a county attorney may initiate criminal
 20 proceedings against him."

21 **Section 61.** Section 33-25-202, MCA, is amended to
 22 read:

23 **"33-25-202.** Sharing of rate proceeds. Title insurers
 24 and agents insurance producers may share rate proceeds
 25 between or among themselves in any combination and may

1 ~~exchange business and share~~ accept commissions as provided
 2 in 33-17-1103, unless the sharing of rate proceeds is an
 3 unlawful rebate or inducement under this title or is a
 4 payment of a forwarding fee or finders fee."

5 **Section 62.** Section 33-25-214, MCA, is amended to
 6 read:

7 **"33-25-214. Underwriting standards -- record**
 8 **retention.** (1) A title insurer may not issue a title
 9 insurance policy unless it, its title agent insurance
 10 producer, or an approved attorney has conducted a reasonable
 11 search and examination of the title and made a determination
 12 of insurability of title in accordance with sound
 13 underwriting practices. The title insurer or title agent
 14 must insurance producer shall preserve and retain in its
 15 files evidence of the examination of title and determination
 16 of insurability. The title insurer or title agent insurance
 17 producer may keep original evidence or may establish in the
 18 regular course of business a system of recording, copying,
 19 or reproducing evidence by any process that accurately and
 20 legibly reproduces, or forms a durable medium for
 21 reproducing, the contents of the original.

22 (2) Subsection (1) does not apply to:

23 (a) a title insurer assuming liability through a
 24 contract of reinsurance; or

25 (b) a title insurer acting as coinsurer if one of the

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1 other coinsuring title insurers has complied with subsection
2 (1).

3 (3) Except as allowed by rules adopted by the
4 commissioner, no a title insurer or title agent insurance
5 producer may not knowingly issue an owner's title insurance
6 policy or commitment to insure unless all outstanding
7 enforceable recorded liens or other interests against the
8 property title to be insured are shown.

9 (4) An insurer issuing a policy in violation of this
10 section is estopped, as a matter of law, to deny the
11 validity of the policy as to any claim or demand of the
12 insured arising thereunder under the policy."

13 **Section 63.** Section 33-25-301, MCA, is amended to
14 read:

15 "33-25-301. Refusal, suspension, or revocation of
16 title agent's insurance producer's license. (1) In addition
17 to the causes provided in 33-17-1001, the commissioner may
18 refuse to license a person as a title agent insurance
19 producer or may suspend or revoke a title agent's insurance
20 producer's license if, after a hearing held after notice as
21 required in 33-17-1001, he finds that the license applicant
22 or licensee has:

23 (a) made a material misstatement in an application for
24 a title agent insurance producer license;

25 (b) commingled funds belonging to applicants, escrow

1 participants, or others;

2 (c) intentionally misrepresented the terms of a title
3 insurance policy to an applicant or policyholder or has
4 misrepresented material facts to, concealed material facts
5 from, or made false statements to a party to an escrow,
6 settlement, or closing transaction;

7 (d) in the conduct of his affairs under his title
8 agent's insurance producer's license, used coercive
9 practices or shown himself to be financially irresponsible;

10 (e) aided, abetted, or assisted another person in
11 violating the provisions of this title or a rule adopted by
12 the commissioner.

13 (2) The commissioner may impose any other appropriate
14 penalty provided for in this title.

15 (3) The commissioner may refuse, suspend, or revoke
16 the license of a ~~firm, corporation, or other business entity~~
17 person licensed as a title agent insurance producer for the
18 actions described in subsection (1) of any individual
19 designated in the license to exercise its powers."

20 **Section 64.** Section 33-25-302, MCA, is amended to
21 read:

22 "33-25-302. Disapproval of agency contracts. (1) The
23 commissioner may disapprove a title agency contract between
24 a title agent insurance producer and title insurer, upon
25 appropriate notice to the parties to the contract, if he

1 finds that the contract, together with all amendments and
2 related documents:

3 (a) does not provide for adequate monitoring of the
4 agent's insurance producer's financial transactions; or

5 (b) provides for inadequate, unreasonable, or
6 excessive amounts to be paid to or retained by the title
7 agent insurance producer. Factors the commissioner may
8 consider in this determination include but are not limited
9 to the agent's insurance producer's duties under the
10 contract and the general level of amounts paid to or
11 retained by other title agents insurance producers in the
12 state performing or assuming comparable duties.

13 (2) No A person may not act as a title agent insurance
14 producer under an agency contract that has been disapproved
15 by the commissioner."

16 **Section 65.** Section 33-25-401, MCA, is amended to
17 read:

18 "33-25-401. Prohibited practices -- referrals --
19 splitting charges -- exemptions. (1) Except as provided in
20 subsection (2), no a person may not:

21 (a) give or accept a fee, rebate, or thing of value
22 pursuant to an agreement or understanding that title
23 insurance business will be referred to a title agent
24 insurance producer; or

25 (b) give or accept a portion, split, or percentage of

1 a charge made or received for title insurance business in
2 connection with a transaction involving real property in
3 this state, other than for services actually performed.

4 (2) (a) A person may pay a return on an investment,
5 based on a percentage of an ownership interest in a title
6 insurance agency, if:

7 (i) at or prior to the time of a referral, a
8 disclosure of the existence of the arrangement is made to
9 the person being referred and, in connection with the
10 referral, the person is provided a written estimate of the
11 charge or range of charges generally made by the title agent
12 insurance producer to which the person is referred; and

13 (ii) the person is not required to use a particular
14 agent insurance producer.

15 (b) The following arrangements are not a violation of
16 subsection (2)(a)(ii):

17 (i) an arrangement that requires a buyer, borrower, or
18 seller to pay for the services of an attorney, credit
19 reporting agency, or real estate appraiser chosen by a
20 lender to represent the lender's interest in a real estate
21 transaction; or

22 (ii) an arrangement by which an attorney or law firm
23 represents a client in a real estate transaction and issues
24 or arranges for the issuance of a policy of title insurance
25 in the transaction directly as agent insurance producer or

through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(c) Failure to disclose a controlled business relationship is not a violation of subsection (2)(a)(i) if the failure was not intentional and resulted from a bona fide error, proven by a preponderance of the evidence.

(3) This section does not prohibit:

(a) the payment of a fee to an attorney for services actually rendered or by a title agent insurance producer for services actually performed in the issuance of a title insurance policy; or

(b) payment of a bona fide salary, compensation, or other payment for goods or facilities actually furnished or for services actually performed."

Section 66. Section 33-25-403, MCA, is amended to read:

"33-25-403. Prohibited practices -- producer and associates -- prohibition of favored agent insurance producer or insurer. No A producer or associate may not, directly or indirectly, require as a condition, agreement, or understanding of providing another person a loan, loan extension, credit, sale, property, contract, lease, or service that the other person obtain title insurance of any kind from a particular title insurer or title agent

insurance producer. No A title insurer or title agent insurance producer may not knowingly participate in a plan or transaction prohibited by this section."

Section 67. Section 33-22-1703, MCA, is amended to read:

"33-22-1703. Definitions. As used in this part, the following definitions apply:

(1) "Emergency services" means services provided after suffering an accidental bodily injury or the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that without immediate medical attention the subscriber or insured could reasonably expect that:

(a) his health would be in serious jeopardy;

(b) his bodily functions would be seriously impaired;

or

(c) a bodily organ or part would be seriously damaged.

(2) "Health benefit plan" means the health insurance policy or subscriber arrangement between the insured or subscriber and the health care insurer that defines the covered services and benefit levels available.

(3) "Health care insurer" means:

(a) an insurer that provides disability insurance as defined in 33-1-207;

(b) a health service corporation as defined in

1 33-30-101;

2 (c) a health maintenance organization as defined in
3 33-31-102;

4 (d) a fraternal benefit society as defined in
5 33-7-102;

6 (e) an administrator as defined in ~~33-17-601~~
7 33-17-102; or

8 (f) any other entity regulated by the commissioner
9 that provides health coverage.

10 (4) "Health care services" means health care services
11 or products rendered or sold by a provider within the scope
12 of the provider's license or legal authorization or services
13 provided under Title 33, chapter 22, part 7.

14 (5) "Insured" means an individual entitled to
15 reimbursement for expenses of health care services under a
16 policy or subscriber contract issued or administered by an
17 insurer.

18 (6) "Preferred provider" means a provider or group of
19 providers who have contracted to provide specified health
20 care services.

21 (7) "Preferred provider agreement" means a contract
22 between or on behalf of a health care insurer and a
23 preferred provider.

24 (8) "Provider" means an individual or entity licensed
25 or legally authorized to provide health care services or

1 services covered within Title 33, chapter 22, part 7.

2 (9) "Subscriber" means a certificate holder or other
3 person on whose behalf the health care insurer is providing
4 or paying for health care coverage."

5 NEW SECTION. Section 68. Repealer. Section 33-17-202,
6 33-17-204, 33-17-205, 33-17-218, ~~33-17-231~~, ~~--33-17-232~~,
7 33-17-402, 33-17-403, AND 33-17-601, ~~and--33-17-1104~~, AND
8 33-17-1104, MCA, are repealed.

9 NEW SECTION. Section 69. Extension of authority. Any
10 existing authority to make rules on the subject of the
11 provisions of [this act] is extended to the provisions of
12 [this act].

13 NEW SECTION. Section 70. Codification instruction.
14 [Section SECTIONS 4 THROUGH 6] ~~is~~ ARE intended to be
15 codified as an integral part of Title 33, chapter 17, and
16 the provisions of Title 33, chapter 17, apply to [section
17 SECTIONS 4 THROUGH 6].

18 NEW SECTION. Section 71. Saving clause. [This act]
19 does not affect rights and duties that matured, penalties
20 that were incurred, or proceedings that were begun before
21 [the effective date of this act].

22 NEW SECTION. Section 72. Severability. If a part of
23 [this act] is invalid, all valid parts that are severable
24 from the invalid part remain in effect. If a part of [this
25 act] is invalid in one or more of its applications, the part

1 remains in effect in all valid applications that are
2 severable from the invalid applications.

3 NEW SECTION. **Section 73.** Effective date. [This act]
4 is effective January 1, 1990.

-End-

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